

Pax Denarra

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA

CASE NO. 96-5493 et al

In the Matter of:

E. R., a child, et al

COPY

3300 N.W. 27th Avenue
Room 2-4
Friday, 8:12 a.m.
November 14, 1997

VOLUME III

The above-entitled matter came on for hearing
before The Honorable STEVEN D. ROBINSON, presiding
Circuit Court Judge, at 3300 Northwest 27th Avenue,
Miami, Dade County, Florida.

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I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS

November 14, 1997:

PAUL DeMURO

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1 P R O C E E D I N G S

2 MR. ROSENTHAL: Judge, is the Clerk available
3 or will she be available shortly?

4 THE HEARING OFFICER: She will be and if you
5 need something marked, I can mark it.

6 MR. ROSENTHAL: Okay. Let me -- I think
7 there is an agreement or at least a partial
8 agreement as to this, so let me get this out of
9 the way, while we are waiting for the kids to be
10 brought over.

11 THE HEARING OFFICER: Oh, yeah, after that,
12 I need you to go into my Chambers and get my black
13 bag because ---

14 You have been having a little problem with
15 the -- you-all have been having some problem with
16 the children?

17 MR. DAKAN: Yes, that's correct, Judge.

18 We perhaps need to have the Public Defender
19 talk to their clients.

20 MR. ROSENTHAL: Okay. Are you all set?

21 Judge, these are the documents that were
22 supplied to us by the Department of Public Records
23 by request.

24 I have for the Clerk, for the Court to the
25 Court's convenience, if it is helpful, these are

1 total of nine exhibits. I can briefly identify
2 them.

3 These are Exhibit 2 or proffer Exhibit 2.
4 Our Exhibit 2 would be the contract and
5 supplements to the contract.

6 Our Exhibit 3 would be a fax from Mr.
7 Hinchliffe, who is sitting here, from the
8 Department -- I'm sorry, a fax to Mr.
9 Hinchliffe from Michael Garretsen, dated October
10 7, 1996.

11 Five would be -- I'm sorry, that was four.

12 Exhibit 5 would be the 1997 annual report
13 of the Juvenile Justice Advisory Board.

14 Six would be the report and attachments
15 from May 1977.

16 Seven, which is a thick one and it is
17 in three parts, are the Pahokee manuals.

18 Eight is the Department's residential
19 restriction levels and commitment program
20 models.

21 Nine is the commitment management and
22 placement.

23 And Ten is the residential commitment
24 services manual.

25

1 (Thereupon, Defendant's Exhibits Nos. 2,
2 3, 4, 5, 6, 7, 8, 9, and 10 were placed
3 into evidence.)

4 I believe we have a stipulation from the
5 Department that a custodian need not be called.

6 I believe the Department is reserving the
7 right to object on relevancy grounds on the basis
8 the Court doesn't have the authority to conduct
9 the hearing and I think that's the extent of their
10 objections.

11 MR. DAKAN: That's correct, Judge.

12 And we would impose our -- anyway put our
13 objection on record at this point that this is
14 really a continuation of subject matter,
15 jurisdiction objection.

16 We had no objection subject to that of
17 those items that have been identified going into
18 evidence.

19 THE HEARING OFFICER: If you have a
20 continuing objection on their ability to even
21 say that.

22 MR. ROSENTHAL: I do, but I won't be
23 repeating that. I mean, you know, it's all
24 stated of record and yes.

25 MR. DAKAN: Yeah, uh-huh.

1 MR. ROSENTHAL: No, not -- it's not for
2 them to state their position. I have no objection
3 to that. Just the state of this party, that's the
4 only expended objection.

5 MR. DAKAN: Right.

6 Judge, we would like to just renew the
7 or ask the Court to renew the continuing
8 objection that we have of any of the testimony.

9 THE HEARING OFFICER: That's fine. It's
10 all renewed.

11 MR. DAKAN: Uh-huh.

12 MR. ROSENTHAL: All right. Judge, we
13 would call Mr. Paul DeMuro to the stand.

14 THE HEARING OFFICER: Raise your right hand.
15 Do you swear or affirm that the testimony
16 will be the truth?

17 THE WITNESS: Yes, sir.

18 Thereupon:

19 PAUL DeMURO

20 was called as a witness and, after having been first
21 duly sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ROSENTHAL:

24 Q. Mr. DeMuro, would you state your name for the
25 record, please?

1 A. Paul DeMuro.

2 Q. And spell it for the reporter?

3 A. D-e-M-u-r-o.

4 Q. And would you give the Court -- Judge, I
5 apologize, I had his resume here and I'm just -- I
6 misplaced it on the way from there to here.

7 Would you give the Court a brief synopsis of
8 your experience and background, please?

9 A. I have about a 25-year experience in Juvenile
10 Justice and Child Welfare and somewhat in Adult
11 Corrections.

12 I have unsecured facilities, I have managed
13 State systems in Massachusetts and in Pennsylvania and
14 for the last ten years, I have been working for myself
15 primarily working for Federal District Courts as a
16 Court monitor, or for foundations, and State systems
17 developing programs for kids; both community programs
18 and institutional programs.

19 Q. Would you -- Judge, I would, just for the
20 record, submit as an exhibit Mr. DeMuro's resume.

21 MR. DAKAN: No objection.

22 BY MR. ROSENTHAL:

23 Q. For short summary, that will be Defendant's
24 Exhibit 11. The Court would need to mark that.

25 MR. DAKAN: We have no objection, Your Honor,

1 and would stipulate that Mr. DeMuro would testify
2 to what's set forth there.

3 We would also stipulate that he is an expert
4 in the areas that are covered by --

5 MR. FABER: Is that Exhibit 11?

6 MR. ROSENTHAL: Exhibit 11.

7 MR. DAKAN: --Exhibit 11.

8 (Thereupon, Defendant's Exhibit No. 11
9 was entered into evidence.)

10 MR. ROSENTHAL: I appreciate the stipulation
11 and would not impose upon the Court for more than
12 a minute or two.

13 Mr. DeMuro, could you briefly state the
14 more significant levels of responsibility that
15 you have had in either the Juvenile or the Adult
16 Corrections or Juvenile Justice field?

17 THE WITNESS: I was the Commissioner of
18 Children and Youth in Pennsylvania, which had
19 responsibility for all training schools, secure
20 units, and non-residential and residential
21 programs for judicated delinquents, as well as
22 oversight of the County-run Child-Welfare System.

23 Previous to that, I was the Director of
24 Corrections Education in Pennsylvania, which had
25 responsibility for Adult prison's education.

1 That is inmate -- education for Prisoners
2 Community Adult System.

3 Subsequent to that, I was asked to join the
4 National Council of Crime and Delinquency and was
5 the Vice-President for Program Services.

6 And in that capacity, developed programs for
7 the Justice Department for violent offenders in
8 five states, and served as a technical consultant
9 to the Justice Department in that capacity.

10 BY MR. ROSENTHAL:

11 Q. Is that the U.S. Justice Department?

12 A. That is the U.S. Justice Department.

13 Since entering, actually working for myself,
14 I've worked for the Justice Department as a consultant
15 and also for District Courts, Federal District Courts
16 as either a Court-appointed monitor or as a panelist
17 appointed by Federal Courts to resolve class-action
18 litigation.

19 I also do work with the Annie E. Casey
20 Foundation, which is the largest philanthropic
21 organization committed to developing programs for kids
22 in Child Welfare or Juvenile Justice in Mental Health
23 Systems.

24 Q. Thank you. And you were retained on behalf
25 of the Public Defender's Office to look at the Pahokee

1 and Polk facilities run by the Department of Juvenile
2 Justice; is that correct?

3 A. Yes.

4 Q. And did you visit Pahokee and/or Polk?

5 A. I visited both facilities a week ago today.

6 Q. And can you tell us your observations of
7 Pahokee?

8 A. Pahokee is a prison-like facility, built I
9 believe as a prison, handling about 350 inmates.

10 From my point of view, it is an appropriate
11 placement for youngsters ---

12 MR. DAKAN: Judge, I'm going --- Never mind.

13 I was going to object, but I withdraw the
14 objection.

15 BY MR. ROSENTHAL:

16 Q. Proceed, Mr. DeMuro.

17 A. As I said, it's a prison-like facility.
18 There's a negative sub-culture, it permeates the living
19 units, where kids from various cities, whether it is
20 gang-affiliated or turf-affiliated, often fight with
21 one another.

22 There's a pecking order, a sub-culture
23 pecking order that is clear, where larger and stronger
24 kids can take advantage of weaker kids.

25 There are often fights. There is appropriate

1 treatment. There are a number of kids who have serious
2 problems with their family or with drugs, who don't get
3 treatment.

4 There are kids on psychotropics, who aren't
5 monitored carefully.

6 There are other kids who had been on
7 psychotropics, who aren't getting psychotropics.

8 There's a behavior management system, which
9 is inconsistently applied across the units, so that
10 some kids can spend ten or eleven months on Level One.
11 This is particular true for younger kids who have a
12 poor impulse control or a tension deficient disorder.

13 So that you often have first-time offenders,
14 who have first-time commitments, who have either low
15 IQ's or are hyperactive, have difficulty making their
16 levels, so the behavior management doesn't really
17 connect individual treatment.

18 There is inconsistent use of force and take-
19 downs. Staff often curse at kids, abuse kids ---

20 MR. DAKAN: Your Honor, may I ask that he
21 go just a tad slower, so that I can get all of
22 this down.

23 THE WITNESS: Certainly.

24 MR. DAKAN: Thank you.

25 A. (Continuing) Staff often curse at

1 youngsters, talk about their family situations.

2 There is an inappropriate use of force by
3 banging kids against the wall and taking them down.

4 There is an inappropriate use of isolation,
5 where youngsters is placed in the isolation for long
6 periods of time without due process hearings.

7 And there is an inappropriate use of
8 restraints, where kids' hands and feet are affixed
9 together. The very rough term of art is called "hog-
10 tying" and that goes on.

11 And really one other thing I mentioned there
12 is a shackling of kids to beds in the isolation unit.

13 When kids are in the discipline unit during
14 the day, they are not given mattresses. If they fall
15 asleep or sing, water is thrown on them.

16 So, I can go on, but essentially this is a
17 prison-like environment. Built as a prison and in some
18 ways, conducted as a prison.

19 Q. And did you speak to children from Dade
20 County when you were up there?

21 A. Yes, I did.

22 Q. Do you recall the names of the children you
23 spoke with?

24 A. I would have to get my notes to get them all,
25 but the young men in the back of the room, I spoke to

1 each of them.

2 I spoke to eleven youngsters. Mr. D [REDACTED]. Mr.
3 C [REDACTED]. I mean I would have to get my notes, but I
4 talked to E [REDACTED], I talked to every youngster who is
5 currently here. We did eleven interviews during the
6 time I was there.

7 Q. Did you speak to any youths other than from
8 Dade County?

9 A. Yes.

10 Q. Was that intentional or accidental?

11 A. Unintended.

12 Q. And how did that occur?

13 A. We were in the isolation unit, which is
14 called the "confinement unit" and we were instructed
15 and we were attempting to play by the rules of only
16 talking to the Dade County youngsters.

17 Q. Let me interrupt. When you say "play by the
18 rules," who set the rules?

19 A. Oh, the rules are set by DJJ, I believe.

20 Q. You were not permitted to speak to children
21 other than from Dade County?

22 A. That's correct.

23 MR. DAKAN: Judge, I'm going to object to
24 that. This Court entered a specific Order, which
25 the Public Defender asked for.

1 They never asked to speak to anybody else
2 and this Court entered an Order in accordance with
3 what the Public Defender wanted.

4 So, I am going to object to that as being
5 really an inappropriate comment and not ---

6 THE HEARING OFFICER: I'm not sure exactly
7 that was what my Order was.

8 MR. ROSENTHAL: Judge, the Court ordered
9 access to Mr. DeMuro, over the Department's
10 objections.

11 THE HEARING OFFICE: Yeah, I -- I -- yeah,
12 I don't recall that they were -- that's on the
13 record. I mean I don't quite recall saying that
14 you-all --- Did I say that?

15 I mean, that you should only speak to
16 children from Dade County?

17 MS. OSBORNE: Judge, if you want to reserve,
18 Robin Faber actually I think typed up an Order.

19 So then we will have what you ordered.

20 MR. DAKAN: Here's a copy of it, Judge.

21 And frankly if Mr. Rosenthal -- I have to
22 pass it up that way, I can't get by here.

23 MR. ROSENTHAL: Judge, at the pause in the
24 proceeding, let me -- let me just ask that the
25 Court have the record reflect that Mr. George

1 Hinchliffe, Assistant Secretary for, I believe
2 Planning and Programming from the Department is
3 present.

4 There is a sequestration rule in effect. I
5 do not object to the extent that Mr. Hinchliffe's
6 testimony, which would be anticipated on a
7 subsequent date, would be as to expert matters
8 consistent with the Court's ruling.

9 But to the extent that he might be a fact
10 witness, I just call this to the Court's
11 attention.

12 THE HEARING OFFICER: Well, it's a question
13 as to whether or not having given them credit
14 party status, where they can have a representative
15 here.

16 MR. ROSENTHAL: That's correct. That's
17 absolutely correct.

18 MR. DAKAN: And, Judge, being that this Court
19 has given this party status for purposes of this,
20 I think we fully are entitled to an agency
21 representative.

22 THE HEARING OFFICER: And that is he?

23 MR. DAKAN: Yes, that's correct, Judge.

24 THE HEARING OFFICER: Yeah, I -- I think the
25 idea was that the records and so forth of children

1 would be limited to the Dade County clients.

2 I'm not sure that speaking to somebody, who
3 wanted to voluntarily speak and give up whatever
4 privilege that they may have, would be contrary to
5 this Order.

6 MR. ROSENTHAL: Thank you, Judge.

7 And could I just ask qualification from the
8 Court as to the ground rules of Mr. Hinchliffe's
9 participation.

10 I just want the record to be clear that ---

11 THE HEARING OFFICER: If they want to call
12 him as a witness, they may call him as a witness.

13 MR. ROSENTHAL: Okay. Is there any problem
14 with the sequestration rule to the extent that he
15 might be testifying to facts rather than expert
16 opinions.

17 THE HEARING OFFICER: Not of he's their
18 representative.

19 MR. ROSENTHAL: Okay, okay.

20 Mr. DeMuro, proceed. And let me just
21 reiterate to clarify for the record.

22 So the Department to your understanding
23 or communication made to you, it was the
24 Department that prevented you from speaking with
25 children from other than Dade County; is that

1 correct?

2 THE WITNESS: That was my understanding
3 the day of those, yes.

4 BY MR. ROSENTHAL:

5 Q. Okay. Was any official of the Department
6 present when you made your visit?

7 A. Mr. Hinchliffe was present.

8 Q. Were you allowed free run of the facility?

9 A. Within certain limits.

10 Q. What was the limits?

11 A. It was difficult to look at written records,
12 logs, of isolation, specifically.

13 And it was said to me, I don't know on what
14 authority, it was said to me that I can only talk with
15 Dade County youngsters.

16 Q. Mr. Hinchliffe said that to you?

17 A. Yes.

18 Q. Did he accompany you throughout your tour of
19 inspection of the facility?

20 A. Yes.

21 Q. I mean within the immediate presence of ---

22 A. With the exception of the individual
23 interviews with youngsters.

24 Q. And that was the Dade County juveniles?

25 A. Yes.

1 Q. Okay.

2 So with the exception of what might
3 ordinarily be confidential discussions, he was present
4 throughout your inspection of the facility?

5 A. Yes.

6 Q. Proceed with -- have you fully described your
7 observations?

8 Is there anything else that you would like to
9 tell us about the facility?

10 A. Many of the youngsters interviewed were under
11 the impression they were going to a facility that were
12 told by the DJJ folk staff that they were going to a
13 facility that was -- had fishing, had work release, had
14 hiking, swimming.

15 Were told that really what was described
16 sounded like an Oxyurid Youth camp or a short-term kind
17 of an outward bound program.

18 And obviously they were rather surprised at
19 what they found when they got to Pahokee.

20 Many of the youngsters, all of the youngsters
21 said very articulately they couldn't trust anybody
22 there. That they felt that and I pushed them in
23 interviews very clearly and specifically is there
24 anybody here, one staff, who you can confide in if you
25 had a personal matter?

1 Every youngster said there was no one. That
2 they thought the facility was not helping them. All
3 the youngsters were worried about their safety, their
4 personal safety.

5 Many of the youngsters were worried about
6 their lack of contact with home as a remote facility.
7 It is distant from home. Some didn't get visits.

8 Many youngsters had difficulty making the
9 behavior levels because of the behavior I described,
10 lack of impulse control and what have you.

11 So that there are other observations. Most
12 stark was the fifteen or twenty minutes I spent in one
13 of the pods.

14 Now a pod is a jail-like term, there are
15 twenty-four individual rooms on two tiers: twelve and
16 twelve.

17 In that pod, are forty-eight youth. If any
18 of you have seen pictures of a prison pod or have been
19 in a prison pod, this is what the environment in that
20 pod was like. You know, black youngsters over here,
21 Hispanic youngsters over here, white youngsters with
22 sunglasses acting as if they were, you know, street
23 tough, milling about.

24 The clearer implications was a negative
25 subculture in that pod, a jail-type subculture, where

1 kids were grouped together because of, I believe, fear.
2 That was a clear impression.

3 Q. Is there anything from the physical point,
4 the physical structure, architecture, configuration of
5 the facility in your opinion to distinguish it from a
6 prison?

7 A. No.

8 Q. And you may have done this, but can you
9 clarify for the record your definition of a prison or a
10 conception of a prison?

11 A. I prefer the word "conception."

12 Large secure facility, with varying levels of
13 isolation and segregation, group punishment, punitive
14 interactions between staff and inmates, inappropriate
15 or no treatment.

16 Q. And what about length of stay in relation to
17 behavior?

18 A. Well, this is an oversimplification, but I
19 think it captures some of the problems in prisons and
20 in juvenile facilities which have indeterminate
21 sentencing, that is, the sentence or length of stay is
22 somewhat contingent upon someone's behavior. And I
23 would characterize this for prisons this way and for
24 Pahokee.

25 Bad time equals more time. There's almost a

1 mathematical equation. That is to say, if a youngster
2 has poor impulse control and gets into a fight, then he
3 remains on Level One and he can't get to Level Two.
4 So, that elongates his length of stay.

5 And many of the youngsters I talked with,
6 first commitment youngsters, were in there for ten or
7 eleven months.

8 Q. What does that characteristic do to a
9 juvenile's sense of control or absence of control over
10 his life or ability to improve himself or not?

11 A. It undercuts the necessity or the amenability
12 to treatment. No matter what you try to do in one hour
13 of clinical services, it undercuts that.

14 There's a rather famous book that goes back
15 twenty years called the "Other 23 Hours" by a
16 Psychiatrist by the name of Trishman, which captures
17 this.

18 You may even have one or two hours of good
19 clinical services in a facility, but if the negative
20 subculture is such, there's just lack of trust, there's
21 fear. It is the subculture of gangs that takes over.

22 The treatment gains are eroded even if there
23 are treatment gains there by the negative subculture.

24 Q. Is there a way to compare on a profile or a
25 composite basis a juvenile who leaves such a facility,

1 with that type of juvenile at the time of entry of that
2 facility?

3 A. Difficult, but possible if you have reimposed
4 testing on psychological profiles.

5 Q. Is there any empirical data on that?

6 A. I'm not quite sure.

7 Q. What about punishment in terms of the
8 individual versus punishment of the group?

9 A. In Pahokee, most of the kids are tested that
10 there were group lock-downs for very minor behavior:
11 typically coming back from dinner or a movement or two
12 or three kids would talk in line or laugh or sing.

13 The whole unit would get locked down at seven
14 o'clock at night and spend an excessive time in lock-
15 down.

16 Behaviors that would be appropriate in terms
17 of developmental age and I'm not talking about gang
18 fights here, I'm talking about kind of kidding and
19 joshing around would be met with group lock-down.

20 So that even youngsters that weren't being
21 involved in that behavior, would be subject to that
22 group lock-down. That also is prison-like.

23 Q. I'm going to ask you to give the following
24 opinion in hypothetical terms, understanding as a
25 ground rule that it is ultimately for the Court +

1 determine the meaning and interpretation of the
2 statute. So I'm not going to ask you what the statute
3 signifies.

4 If the statute for Level Six could be fairly
5 characterized as the treatment or amenability to
6 rehabilitation of the juvenile prevails over security
7 interest, but recognizing that they are both present,
8 is this facility appropriate for that?

9 A. No.

10 MR. DAKAN: Judge, I'm going to object,
11 number one, and move to strike. Obviously,
12 Mr. DeMuro did not give me the authority to
13 interpose my objection.

14 I think this Court has already indicated
15 and quite properly that the area of interpretation
16 of which that would be a part of, is not a matter
17 for expert testimony.

18 And he can testify as to what he observed,
19 but he cannot give an expert testimony with
20 respect to ---

21 THE HEARING OFFICER: Well, he can -- he can
22 say whether or not -- I mean the Court will decide
23 whether or not and I think you made a very, you
24 know, cogent point in your opening statement as to
25 philosophy and so forth.

1 But assuming for a moment that the Court
2 would interpret the moderate risk as being
3 something that that would be contrary to what
4 we're saying that rehabilitation was important and
5 it would be just a question of, you know, how to
6 gain that rehabilitation and reasonable minds
7 could differ how to do that.

8 MR. DAKAN: Uh-huh.

9 THE HEARING OFFICER: I would think that
10 expert opinion as to whether or not this kind of
11 facility could lead to rehabilitation is most
12 relevant and would not be invading the province of
13 the Court.

14 MR. ROSENTHAL: I'm not sure if we
15 attained -- well, okay.

16 BY MR. ROSENTHAL:

17 Q. I'm sorry, was your answer fully stated by
18 the point of the objection or shall we repeat the
19 question.

20 A. I'd like you to repeat the question, if you
21 could.

22 Q. Assuming that an interpretation of the
23 statute by the Court, were that the balance or the
24 break point of Level Six or higher levels was that at
25 Level Six rehabilitation or amenability to treatment

1 interest prevail over a security interest, although
2 both are present, is this facility appropriate for that
3 balance?

4 A. No.

5 MR. DAKAN: Same objection, Judge.

6 THE HEARING OFFICER: Overruled.

7 THE WITNESS: The answer is no.

8 BY MR. ROSENTHAL:

9 Q. And why not?

10 A. For many of the characteristics I listed on
11 the previous responses.

12 There is an inappropriate -- well, let's
13 start here -- there is a subculture of violence, turf
14 violence between kids and staff and kid violence, which
15 permeates the entire facility.

16 There is a lack of trust between kids and
17 staff. In that -- in that context, it is impossible to
18 have reasonable treatment. Treatment is relationship.
19 Treatment is someone believing someone is there to help
20 them and entering in whether that happens to be a
21 Freudian or transactional analysis or outward bound,
22 whatever the method is, is essentially someone
23 believing that they are entering a process with a
24 relationship that is meant to help them.

25 You know, if you get it down to kind of an

1 essential poor, that is impossible in a facility like
2 this and you overlay the other problems I talk about,
3 where the individual treatment needs, a youngster who
4 is suicidal, being locked in isolation and being
5 restrained to a bed, a youngster who has a drug problem
6 and can't get to drug treatment, a youngster who has
7 family problems, whose charge says battery, but it's a
8 fight with his 19-year-old brother and there's no
9 family intervention.

10 I mean this is hardly treatment. The
11 treatment is all the same, these behavior management
12 levels, which are essentially how you react in the
13 living units. Go back to "Bad time equals more time"
14 actually.

15 So that for these and other reasons, the
16 onerousness of the confinement, the tremendous staff
17 turnover, the lack of training that, you know, I cannot
18 conceive of this facility, the size of the facility,
19 the location of the facility, of being an appropriate
20 treatment place for a Level Six kid.

21 Q. Is there any structural or programming or
22 operational change to a facility of this configuration
23 that could achieve a Level Six status?

24 MR. DAKAN: Judge, again, I'm going to object
25 to that. Number one, there's no indication that

1 he is an expert as to what levels are.

2 And I don't think there's anything in the
3 resume that we stipulated to that.

4 And, number two, this is squarely is going
5 to the question of interpretation of the statute.

6 So we would object to that opinion.

7 THE HEARING OFFICER: Why don't you give him
8 a predicate as to what you conceive that it is and
9 let him fit in there, you know, and cross-
10 examination could define the level differently.

11 MR. ROSENTHAL: Thank you.

12 BY MR. ROSENTHAL:

13 Q. Mr. DeMuro, have you been supplied with the
14 restrictiveness level portion of the statute, the
15 definition levels of the statute?

16 A. Yes, I have.

17 Q. And can you, this may be unfair, from
18 recollection, can you and we will supply to you, if
19 necessary, can you describe your understanding of the
20 difference in the statute between Level Six and Level
21 Eight?

22 A. Yeah. Level Six is a moderate-risk
23 youngster. A youngster who has not committed a major
24 felony against person that resulted in major physical
25 injury. Is essentially a property crime and a chronic

1 property crime.

2 In the Department's own manuals, there is a
3 lower risk cutoff for Level Six kids versus Level Eight
4 kids. They administer a state-of-the-art risk
5 assessment. So they have an aggregate lower risk score
6 than the high-risk kids.

7 There also is -- I forget the language -- I
8 think implicit in both the statute and in the
9 Department's material, of supposition that Level Six
10 kids are amenable to treatment and that, you know, that
11 treatment, if we have a look at the statute, is a Level
12 Six level, a moderate level.

13 Q. You refer to the risk assessment of the
14 Department as being state of the art. If the
15 Department asserted that the facility is the state of
16 the art for a moderate-risk child, would that be an
17 inaccurate or correct characterization?

18 A. It would be a totally inaccurate
19 characterization.

20 Q. For the reasons you have stated?

21 A. Uh-huh, yes.

22 Q. If there was a statute that required the
23 Department's rules and policies to conform to accepted
24 standards of care and treatment, in your opinion, would
25 this facility comply?

1 A. Absolutely not.

2 Q. If there was a statute that required the
3 Department to avoid the inappropriate use of
4 correctional programs and large institutions, would
5 this statute -- I'm sorry -- would the facility comply?

6 A. Absolutely not, no.

7 MR. DAKAN: Excuse me. What was the question
8 and answer, Judge?

9 MR. ROSENTHAL: I'll repeat it.

10 MR. DAKAN: Yeah, and with all due respect
11 with Mr. Rosenthal and to the Court, I am not
12 feeling particular well this morning, so I would
13 ask that they would go just a tad slow, you know,
14 I'll try to keep up as best I can.

15 MR. ROSENTHAL: Well, Judge, the reason -- I
16 didn't think I was going unduly rapid and I
17 thought that there are more than ample time for
18 the Department's objections, if they wish, and
19 there's co-counsel with the Department --

20 MR. DAKAN: Oh, I'm not talking ---

21 MR. ROSENTHAL: --let me just finish.

22 The reason if I have been going rapidly, I
23 don't have the perception, is I am aware that the
24 Department would want to conduct this full cross-
25 examination as it may, and I'm trying to give him

1 the limitations of the Court time this morning and
2 Mr. DeMuro's availability this morning, I'm really
3 trying to accommodate the Department by proceeding
4 through our examination, giving them more time for
5 cross-examination.

6 MR. DAKAN: Judge, I'm going to ask you that
7 Mr. Rosenthal give me the courtesy of slowing down
8 a little bit, because I'm not feeling well this
9 morning.

10 It has nothing to do with objections or
11 anything else. So, thank you.

12 MR. ROSENTHAL: I appreciate that and I
13 will try to accommodate that. I will try to
14 accommodate and speed up cross-examination.

15 THE HEARING OFFICER: Well, we will do our
16 best.

17 MR. ROSENTHAL: Okay.

18 MR. DAKAN: May I have the last question
19 repeated?

20 MR. ROSENTHAL: Perhaps, it might be easier,
21 because we're using tape. It might be easier
22 for me to do it than the Reporter.

23 BY MR. ROSENTHAL:

24 Q. Mr. DeMuro, if there was a statute that
25 provided that the Department is to avoid the

1 inappropriate use of correctional programs in large
2 institutions, would this facility comport with that
3 requirement?

4 A. No.

5 Q. For reasons you have stated or other reasons?

6 A. For the reasons I stated.

7 Q. Did you also visit Polk?

8 A. I did.

9 Q. And I am acknowledging for the record that
10 for scheduling limitations and the brevity of time
11 available in scheduling, Mr. DeMuro's visit was brief.

12 A. Very brief.

13 Q. Were you able to compare the physical
14 facilities?

15 A. They are, with the exception of color,
16 absolutely identical.

17 Q. You have been provided with the programming
18 manuals for both Polk and Pahokee; is that correct?

19 A. Yes.

20 Q. Is there any material or significant
21 difference between the operating manuals?

22 A. I saw no significant difference between the
23 contracts and the manuals.

24 Q. Is there a level difference between Polk and
25 Pahokee?

1 A. I believe Polk may have five levels rather
2 than four levels.

3 Q. And just for the record, we're referring to
4 levels that are referring to the institution levels,
5 not the Level Six or Level Eight, which is the subject
6 of this.

7 A. Excuse me, behavior levels.

8 Q. Okay.

9 Do they basically go to the same end and they
10 would operate the same way structurally?

11 A. I didn't have a chance to review the internal
12 programming at Polk with the exception of the
13 Confinement Unit itself.

14 Q. Now your earlier testimony is the
15 relationships within a facility are very important for
16 youth progress in treatment and rehabilitation.

17 If there were significant facility turnover
18 of staff, that is to say if the facility were on its
19 third administrator, acting administrator, within ten
20 months, would that leave the quality of services
21 delivered by the institution unaffected?

22 A. No, the turnover of staff at all levels
23 affects the services in a facility.

24 Q. Would it affect trust of juveniles to the
25 staff within the facility?

1 A. It would affect the relationship between
2 middle and line staff with the superiors. And that, in
3 turn, would have impacted the inconsistent application
4 of rules, which then, in turn, affects the trust.

5 Q. What about the issue of consistency or
6 inconsistency -- I have a little trouble this morning,
7 a little early --

8 MR. DAKAN: I thought I was the only one.

9 BY MR. ROSENTHAL:

10 Q. --of applicator, well, I need some sleep --
11 of application of rules?

12 A. That's a major problem in a facility of where
13 youngsters are looking for consistent structure and of
14 a consistent application of things like, you know, when
15 you are talking a line one day what happens, when you
16 are talking a line the next day what happens.

17 It's a very difficult thing for a youngster
18 to understand; well, from staff, from shift-to-shift,
19 when staff interact differently with them.

20 Q. If there were a diffusion or dispersement of
21 responsibility over facility both within the department
22 that oversees it and in this case, the vendor that runs
23 it, possibly within the vendor's own operations, would
24 that affect the quality and nature of services and
25 effectiveness of outcome?

1 A. It could, sure.

2 Q. And would it be fair to say that the more
3 diffusion of responsibility, the least reliable the
4 indicator of outcome effectiveness?

5 A. Yes.

6 Q. How would you describe the level of security
7 at this facility?

8 A. The level of security is high. There have
9 been a couple of escapes, attempts, but no escapes.

10 MR. DAKAN: Yeah, Judge, I'm sorry, but are
11 we back at Pahokee now, which I think.

12 MR. ROSENTHAL: I'm sorry, I will clarify it.
13 I'm referring to Pahokee. Thank you.

14 THE HEARING OFFICER: Pahokee?

15 MR. ROSENTHAL: I'm sorry, let me take it
16 from the top.

17 BY MR. ROSENTHAL:

18 Q. Referring to Pahokee, how would you describe
19 the levels of security?

20 A. High.

21 Q. Excessively high?

22 MR. DAKAN: Objection, unless he can lay a
23 predicate as to what "excessively high" is.

24 MR. ROSENTHAL: Judge, I think it's a
25 matter ---

1 THE HEARING OFFICER: Overruled.

2 THE WITNESS: Excessively high for a Level
3 Six youngsters, yes.

4 BY MR. ROSENTHAL:

5 Q. Are there particulars in which it is
6 excessive?

7 A. Confined play areas; lock-downs in the dorms;
8 locked dorms; the confinement unit itself; the
9 constantine wire on the fences; the remoteness; the
10 jumpsuits. This is a prison, Counselor.

11 Q. What would the nature of the physical plant
12 convey to the youngsters?

13 A. The youngsters characterize it as a prison
14 also.

15 Q. Would it impact on their own sense of self,
16 for their own perception of relationship to society or
17 lack of it?

18 A. I think it -- I think it escalates the notion
19 that these kids are throw-away kids and are headed for
20 adult corrections.

21 Q. Is it easy to conceive of more significant
22 liberty restrictive facilities at the adult level?

23 A. I'm sorry, I didn't follow that question.

24 Q. Well, let me rephrase it:

25 Is it easy to conceive of adult prisons that

1 could have higher security levels than this?

2 A. Yes.

3 Q. Could you give us an example of such a
4 facility?

5 A. The new facilities in California, that are
6 designed for inmates not to come into contact with one
7 another. This is called "maxi-max."

8 The Federal prisons' system, the Gradafort
9 (phonetic) Prison, state prison in Pennsylvania, 500
10 folks are a cell block.

11 There are degrees, there are higher degrees
12 of security; guns on the turrets.

13 Q. But in any event, this would not be
14 appropriate for juveniles at moderate risk?

15 A. This facility, no.

16 THE HEARING OFFICER: Now, let me just
17 interrupt, before I forget this question.

18 Are you familiar with the classification
19 of prisons in the Florida State Prison System?

20 THE WITNESS: I am not.

21 BY MR. ROSENTHAL:

22 Q. If the justification for this type of
23 facility for moderate-risk youths, were that the youths
24 represent a significant threat to the public safety or
25 had run away from programs, and also given the fact

1 that if that were the case, that a large of the
2 percentage of the population were first commitments,
3 how would you address that mix of concerns?

4 A. Oh, well first of all, I would want a much
5 smaller facility, much closer to an urban area where I
6 recruit clinical and treatment staff that would be able
7 to handle some of those issues and keep connection with
8 the kid's family.

9 When kids run, they run back to their
10 neighborhoods.

11 If I might, the DIR Program here in this very
12 complex, is an illustration: It is secure. It is run
13 in the Detention Center. But -- so we have the ability
14 to take a kid off the street, but we have the ability
15 also to program with his family and himself and the
16 school issues and it is relatively small.

17 I forget when I knew it, it was twenty or
18 twenty-four beds. So there was a degree of security
19 there, but the DIR Program would represent addressing
20 that chronic runaway or the youngster who might have
21 special needs without getting into a large prison-like
22 environment.

23 Q. If the justification for Pahokee or a
24 Pahokee-like facility for moderate-risk youth were that
25 there is risk of violence among the youth is either

1 among themselves or to others, in addition to flight
2 risk, is there a prospect that a facility, such as
3 this, might induce an increase in violence?

4 A. I don't believe there is a prospect. I think
5 there is a high probability that a facility will induce
6 more violence.

7 Q. Why is that?

8 A. First of all, the largeness of it. We're
9 talking about forty-eight young men, from the ages of
10 13 to 17-plus living in a closed environment, from
11 different cities, from different backgrounds, cut off
12 largely from their families, we will, in the kind of
13 subculture that I attempted to identify, we're going to
14 adduce, we're going to bring out levels of violence,
15 fights.

16 I'm not sure it is formal gang affiliations,
17 but it sure as heck turf affiliations: Orlando kids
18 versus Miami kids, which only can be escalated in a
19 facility like this, because youngsters are essentially
20 afraid, so they are going to group together and create
21 these problems.

22 Q. All right. If it were the case that that a
23 grandparent or similar figure had died and the mother
24 sought to take the child to a funeral and the facility
25 did not permit that, would that be an appropriate

1 application of State intervention?

2 MR. DAKAN: Judge, I'm going to object to
3 that and I understand where the testimony is
4 coming, but the reason I'm objecting to it is that
5 that is not something that is within the
6 Department's purview or the facility's purview, is
7 the Court and only the Court that can give
8 authority for the Department to provide leave to
9 any youth.

10 And for that reason, I would object as being
11 irrelevant since it is a Court issue.

12 MR. ROSENTHAL: Judge, I would -- I would ---

13 THE HEARING OFFICER: I think that the only
14 thing then, if that is so, then the only thing
15 missing from the predicate is somebody saying that
16 it is my rule rather than referring the person to
17 the Court for permission.

18 MR. ROSENTHAL: If I may respond. Mr. Dakan
19 is quite incorrect.

20 My recollection of the statute is that for
21 leaves up to three days, that is completely within
22 the Department's discretion.

23 When it exceeds that, it would have to go
24 the Court.

25 MR. DAKAN: Well, again ---

1 MR. ROSENTHAL: I'm proffering to the Court
2 that there's a statutory provision that would
3 authorize ---

4 THE HEARING OFFICER: I'll listen to the
5 question. We can look at the law later.

6 (Thereupon, a brief interruption.)

7 BY MR. ROSENTHAL:

8 Q. Do you recall the question or should I repeat
9 it?

10 A. For clarity, I would like you to repeat it.

11 Q. If a facility refused leave for a juvenile to
12 accompany the mother to the funeral of the mother's
13 father or the child's grandfather, would that -- would
14 that be an appropriate use of State authority?

15 A. Is a Level Six youngster?

16 Q. Yes.

17 A. Yes.

18 Q. It would. Why?

19 A. Well, these are important moments in all of
20 our lives. I was flying down from Chicago yesterday, I
21 sat next to a 13-year-old girl who is visiting her
22 grandmother who is dying of colon cancer. She lives in
23 Canada and the grandmother is in Guatemala.

24 She is much like the young man in the back of
25 the room. She is being rooted to her family, she needs

1 the connectiveness, this is an important -- this is an
2 important time in her family's life.

3 Q. Right.

4 Forgive me for interrupting. You may
5 misheard the question.

6 Did you hear me to say "appropriate" or
7 "inappropriate" use of State authority?

8 A. Inappropriate.

9 Q. Okay. I think I phrased it "appropriate", so
10 take it the way you heard it.

11 You are indicating that would be an
12 "inappropriate" of State authority?

13 A. Right, right.

14 So that we want to engender that
15 connectiveness with youngsters in a positive fashion.

16 This in some ways is what has been in ledger
17 called "a teaching moment."

18 Now, if I was worried because the kid might
19 hurt himself, the appropriate reaction would have a kid
20 accompanied by someone he trusted from staff.

21 But if this is a maternal grandmother, who
22 knew the kid, who perhaps raised the kid, this is the
23 time we can get to some real good not treatment issues,
24 family issues, which I believe are treatment issues.

25 Q. If the child had attempted suicide, would it

1 be appropriate for the facility, whether through intent
2 or just a general level of functioning, to fail to
3 notify the mother for a week of that fact?

4 A. Yes. Yes, it would.

5 Q. I'm sorry, just it would be --

6 A. --it would be a failure.

7 Q. It would be a failure.

8 If a child within the facility had repeatedly
9 slashed his wrists, either for reasons of acting out or
10 attention or perhaps a real risk, would it be
11 appropriate for staff to encourage that youngster or
12 dare that youngster to go ahead, if he was serious
13 about it?

14 MR. DAKAN: Judge, I just need a
15 clarification.

16 When he says "appropriate," is he talking
17 in terms of "appropriate use of State authority"
18 or "appropriate" within the definitions of the
19 statute or "appropriate" within the actual rules
20 of either the facility or the Department.

21 If we could just clarify.

22 MR. ROSENTHAL: The answer is yes. The
23 answer is yes, Judge.

24 MR. DAKAN: All three of them? So he's
25 including 1983 as well?

1 MR. ROSENTHAL: I'm not sure what ---

2 THE HEARING OFFICER: You keep saying 1983,
3 now the difference between 1983 and this
4 proceeding is very profound.

5 MR. DAKAN: I agree to that.

6 THE HEARING OFFICER: Number one, this Court
7 is going to be issuing no injunctions.

8 This Court is not going to be issuing any
9 money damages.

10 So, your equation of this to a 1983
11 proceeding makes no sense to me.

12 MR. DAKAN: Well, Judge, I can appreciate ---

13 THE HEARING OFFICER: The remedy that is
14 being sought in this case is totally unavailable
15 under 1983.

16 MR. DAKAN: Judge, I would disagree with
17 that, with all due respect to Your Honor --

18 And again with all due respect to Your Honor.

19 THE HEARING OFFICER: Because 1983 is a
20 --is a Federal remedy. We're talking here about
21 --we're talking here about a State Judge applying
22 the State law.

23 MR. DAKAN: I agree with that, Judge.

24 --so, with all due respect to Your Honor and
25 I understand where you are coming from and perhaps

1 I am just misperceiving what has been occurring
2 for the last two days, but all I have heard so
3 far is, is issues of conditions of confinement,
4 which would be a violation of State or Federal
5 Civil Rights Act.

6 THE HEARING OFFICER: It may be, but I am
7 not a Judge hearing a case under 1983.

8 MR. DAKAN: Very good, Judge.

9 THE HEARING OFFICER: And it may be that
10 somebody may, one of these kids may decide that
11 they are going to file some lawsuit against you-
12 all under 1983; but that's not what I have in
13 front of me.

14 I have a very simple motion and some of
15 the issues, in my opinion, because that's why I
16 found them relevant, are relevant for this remedy
17 as well as 1983.

18 And you don't equate remedy. Remedy is
19 what makes 1983, 1983; not just factual
20 situations.

21 MR. ROSENTHAL: You may answer, Mr. DeMuro?

22 THE WITNESS: I need the question repeated,
23 Counselor.

24 MR. ROSENTHAL: Let me see if I can remember
25 the question.

1 BY MR. ROSENTHAL:

2 Q. If a juvenile had slashed his wrist either
3 for a need for attention or acting out or perhaps a
4 real suicide possibility, would it be appropriate for
5 staff to -- to taunt or dare the juvenile to go ahead,
6 if he were serious about it?

7 A. Absolutely not.

8 Q. Is there any possible justification for that?

9 A. No.

10 Q. If that occurred and could occur on a
11 systematic or at least repeated basis, what would that
12 say about the sufficiency or deficiency of the rules on
13 any level by which that facility operates?

14 A. Says volumes of the relationship between the
15 youngster, who is doing that, and the facility as the
16 facility is represented by its staff.

17 That is the line staff or the supervisor.

18 Q. What would it say about the delivery of
19 psychological other specifically counseling services if
20 that juvenile had sporadic or relatively infrequent
21 counseling opportunities?

22 A. You probably have to look at a case specific
23 example, but a youngster like that should have an
24 intensive connection to psychological services.

25 Q. Should a juvenile like that be subject to a

1 repeated stays in confinement?

2 A. No.

3 Q. Let me ask you a hypothetical question:

4 If you had two facilities that were
5 physically identical, that in terms of programming,
6 were virtually identical and you had some range of
7 differences between the population in terms of
8 chronicity, perhaps subtle differences, perhaps not,
9 that may get to be determined, could there be any
10 meaningful way to differentiate a moderate risk from a
11 high-risk facility?

12 MR. DAKAN: May I ask him to repeat the
13 question, Judge. I kind of lost track of it.

14 MR. ROSENTHAL: Okay, I'll try.

15 BY MR. ROSENTHAL:

16 Q. If there were two facilities, both of which
17 were physically identical, both of which had
18 substantially the same programming, the manual
19 operating guideline and so forth, and which varied only
20 by some difference between the populations in terms of
21 chronicity, perhaps a subtle difference in matters and
22 perhaps not, could there be any way to differentiate
23 the facilities from moderate risk to high risk?

24 A. I find it difficult to make that
25 differentiation for this reason:

1 As I understand the Juvenile Court, even with
2 the revised act in Florida and in other states, in
3 addition to the security level, there is an interest
4 both in the statute and I believe at the Court level in
5 terms of individual treatment needs of youngsters.

6 Those are more clearly identified for Level
7 Six youngsters; more clearly on the table for Level Six
8 youngsters.

9 So given that, one would assume that a Level
10 Six program, particularly a large Level Six program,
11 twenty-five beds, thirty beds, forty beds, would have
12 an individual treatment regime and would address these
13 interactive issues between staff and kids.

14 Whether that was an Oxcart Youth Camp or a
15 Halfway House or whatever it was, some of the other
16 Level Six programs.

17 So, if your hypothetical if a six and an
18 eight are exactly alike programmically, size, location,
19 I find it improbable, impossible to say that ought to
20 happen, if the classifications doesn't make any sense,
21 I mean.

22 Q. If there were -- placing a cost analysis
23 aside momentarily -- if the rationale for this type of
24 facility for moderate risk were that that we could
25 better deliver services to the youths, that we could

1 provide more services to the youths, that we can gather
2 services in this type of facility that we cannot gather
3 otherwise, does that fit with your observation of
4 Pahokee?

5 A. Absolutely not. No, it does not fit with my
6 observation.

7 Q. And can you specify why it does not?

8 A. Group punishments; negative peer culture in
9 the pods; lack of individualized treatment for family
10 issues, drug issues, anger-control issues; tremendous
11 turf issues between youngsters from one area to
12 another; levels of violence among kids, between staff
13 and kids; distance from family; kids go back to their
14 zip codes, we know that.

15 MR. ROSENTHAL: Judge, if I may briefly
16 interject.

17 If we could have some agreement that the
18 facility is roughly 90 or 100 miles from here?

19 MS. OSBORNE: It's 107.

20 MR. ROSENTHAL: Judge, just so the record
21 would reflect that.

22 MR. DAKAN: Well, ah, that's it, correct?

23 It's close enough, Judge.

24 BY MR. ROSENTHAL:

25 Q. Let's proceed to cost.

1 You have been provided with the items that
2 have been recently identified in evidence, have you
3 looked at the Department's cost figures for this
4 operation?

5 A. I don't want to say absolutely I'm an expert
6 on it, yes, but I reviewed all the material you sent to
7 me, including the contracts and the budget figures.
8 Yes.

9 Q. Is there a significant differentiation within
10 the Department's own protocol or budgeting for large
11 versus small level facilities?

12 A. Most Level Six programs with some exceptions
13 come in between \$65 and \$85, roughly.

14 I believe that Pahokee's initial per diem is
15 \$74 and change.

16 Q. So it's within the range?

17 A. It's in the range.

18 Q. It's within the range of what is in Level
19 Six?

20 A. It's in the range.

21 MR. ROSENTHAL: Judge, we have no more
22 questions.

23 MR. DAKAN: Good. Judge, can we take about
24 ten, fifteen minutes, as I've indicated, I just
25 need to prepare for my cross-examination?

1 THE HEARING OFFICER: Sure.

2 MR. DAKAN: Thank you, Judge.

3 (Thereupon, a brief recess was taken at

4 9:03 a.m.)

5 (9:20 A.M.)

6 THE HEARING OFFICER: The Court is back in
7 session.

8 (Thereupon, proceedings were held up a
9 Mr. Dakan did not return to courtroom.)

10 THE HEARING OFFICER: The Attorney General
11 can do Cross?

12 MR. NEIMAND: I'll defer to the trial
13 attorney.

14 MR. ROSENTHAL: If he gets here.

15 MR. NEIMAND: Judge, Mr. Dakan and Ms.
16 Marvin, I guess they went downstairs and they
17 didn't come back quick enough.

18 THE HEARING OFFICER: You may start the
19 Cross.

20 MR. ROSENTHAL: You might accommodate us.
21 This is just pure formality, I would not otherwise
22 be doing it.

23 These are already admitted, but the Clerk
24 was not here, so perhaps the Court could be
25 apprised.

1 THE HEARING OFFICER: Yeah, we have these
2 new exhibits are added together exhibits.

3 (Thereupon, the Clerk marked Exhibits.

4 And here is Exhibit 11. It hasn't been
5 documented yet.

6 MR. ROSENTHAL: And also just for
7 clarification, the Clerk that was here yesterday,
8 told me that some of those documents are not
9 internally numbered. The Clerk told me that the
10 Clerk's Office takes care of that.

11 THE CLERK: Yes.

12 (Thereupon, an off-the-record discussion
13 was held; after which, Mr. Dakan entered the
14 courtroom:)

15 THE HEARING OFFICER: Are you ready, Mr.
16 Dakan?

17 MR. DAKAN: I believe I am, Judge.

18 Thank you for your patience.

19 THE HEARING OFFICER: Very good. Proceed.

20 CROSS EXAMINATION

21 BY MR. DAKAN:

22 Q. Good morning, Mr. DeMuro.

23 A. Good morning, Counselor.

24 Q. It's good to be able to talk with you again.

25 We had a conversation last week, I believe,

1 actually I guess it was this Tuesday by phone with you;
2 is that correct?

3 A. It was a telephone deposition, I believe.

4 Q. Yes.

5 And I think at the conclusion of that, you
6 had indicated that you would today provide us with a
7 specific list of the various claim violations of
8 various standards, including the ANA Standards.

9 Do you have that list with you today, that I
10 can take a look at it?

11 A. I did not get a chance to read my deposition,
12 so if you could show me where I said that?

13 I believe ---

14 MR. ROSENTHAL: Judge, I'm sorry, if I may
15 interject.

16 I don't see that in the deposition either, so
17 perhaps Mr. Dakan can point to the pages for the
18 record.

19 MR. DAKAN: I will be happy to do that, Your
20 Honor.

21 THE HEARING OFFICER: The witness is handling
22 the question.

23 MR. DAKAN: I'm going to have to provide you
24 with a condensed copy of that.

25 If you would just take a look at the portions

1 that are underlined, I believe about Page 75.

2 THE WITNESS: Thank you.

3 MR. DAKAN: I apologize. I would have been
4 more clear, if I thought there would be any
5 problem with your recollection on that.

6 THE WITNESS: Well, I read the highlighted
7 sections, Counselor, and I don't see where I said
8 I was going to provide you with the ACA Standards.

9 MR. DAKAN: Take a look at Page 81, please.
10 That would be Line 10, through Line 14.

11 THE WITNESS: Yeah, this is a list, this
12 refers to a list of my observations.

13 I'll be happy to give you a better list..
14 I want to make sure you understand it's not
15 exhaustive list, I appreciate that.

16 That was in the context of the discussion
17 about my observations.

18 If you go back to Line 14, Page 80. I
19 hate do this to you, but can you give us a
20 specific observations as to what you found
21 appropriate.

22 MR. DAKAN: Yes, sir, that's correct.
23 What you found inappropriate?

24 Have you got that list with you?

25 THE WITNESS: No.

1 MR. DAKAN: Okay.

2 THE WITNESS: I verbally, I believe
3 verbally under Direct, if I don't identify
4 that list, I maybe incorrectly misunderstood
5 you that you wanted a written list.

6 I never took that interaction to suggest
7 that you wanted a written list.

8 MR. DAKAN: Well, perhaps ---

9 MR. ROSENTHAL: Judge, I would ask that
10 those pages, Pages 75 through 81, be part
11 of the record then?

12 THE HEARING OFFICER: All right. You can
13 submit them as the record and become the
14 exhibit -- what will that be?

15 MR. DAKAN: Well, Judge, it's going to
16 be a little difficult. You know, I have the
17 original here, I don't know how I can split it
18 out.

19 MR. ROSENTHAL: I'll take out my pages.

20 THE HEARING OFFICER: Well, we take it
21 out and make a copy and the copy will be given to
22 the Clerk as a partial portion of the deposition,
23 and it will be part of the record.

24 MR. DAKAN: I would ask that the -- which
25 ones now?

1 MR. ROSENTHAL: Those are Pages 74 through 81
2 I'm dividing.

3 MR. DAKAN: All right.

4 MR. ROSENTHAL: It's Children's Exhibit 12.
5 (Thereupon, Defendant's Exhibit No. 12
6 was marked for Identification.)

7 BY MR. DAKAN:

8 Q. When were you actually --

9 THE HEARING OFFICER: Maybe the safer thing
10 is we'll mark it for Identification and make it
11 part of the record.

12 And I don't think it's really substantive ---

13 MR. ROSENTHAL: That's fine, Judge.

14 I agree. I absolutely do.

15 MR. DAKAN: Are we done; may I continue with
16 this witness?

17 MR. ROSENTHAL: Absolutely?

18 MR. DAKAN: Thank you. .

19 BY MR. DAKAN:

20 Q. --when were you first retained by the
21 Department of Juvenile Justice for this specific
22 assignment, Mr. DeMuro?

23 A. I was not retained by the Department of
24 Juvenile Justice.

25 Q. Excuse me, by the -- as I have indicated, I'm

1 not feeling well and I will appreciate if you will
2 clarify those things for me -- the Public Defender's
3 Office?

4 A. I was initially contacted by the Public
5 Defender sometime in the summer. I was not retained at
6 that time.

7 Q. I understand that. My question to you is and
8 perhaps I didn't make it clear:

9 When were you retained by the Public
10 Defender's Office?

11 A. That was relatively recent. I don't have the
12 precise date, but within two weeks from the date of the
13 visit. The visit was last Friday, so it would have
14 been roughly two weeks prior to the last Friday's date.

15 Q. Okay.

16 A. Robin Faber and I discussed.

17 Q. Okay. And one of the reasons that we set up
18 on that particular Friday was, you had a pretty busy
19 calendar for those two weeks, is that correct?

20 A. I had a very busy calendar, which I discussed
21 with the Public Defender's Office, prior to formally
22 committing to being retained by them.

23 Q. Okay. And in fact, the only time that you
24 did have available was, was that one day, that Friday;
25 is that correct?

1 A. There was a two-day period of time earlier
2 on, but it did not work for everybody, and that was
3 given the Court's wish to have this hearing in an
4 expeditious fashion ---

5 Q. Uh-huh.

6 A. That was the day available, yes.

7 Q. Okay. And as a matter of fact, you needed to
8 leave the Pahokee facility by about six o'clock in
9 order to make a plane in Orlando about seven or so; is
10 that correct?

11 A. I needed to Pahokee facility by six o'clock
12 to make a plane in Orlando.

13 Q. Okay. And the inspection was scheduled for
14 about nine o'clock; is that correct?

15 A. We arrived at Pahokee, according to my notes,
16 at 8:55 a.m.

17 Q. Okay.

18 A. On the Friday, whatever that date of last
19 Friday was.

20 Q. Okay.

21 A. The 7th; is that correct?

22 Q. Whatever, uh-huh.

23 When did the actual -- well, let me rephrase
24 that:

25 The actual inspection started about fifteen

1 minutes later; is that correct?

2 A. Ten to fifteen minutes after that.

3 Q. Okay. You did not eat out, did you?

4 A. We ate in the car to Polk, two peanut butter
5 crackers if you want that on the record.

6 Q. Okay. And by the way, you were offered the
7 food at the facility, weren't you?

8 A. I don't remember. We were interviewing kids
9 up through 11:30 or 12:00. We may have, I don't have
10 any recollection of that.

11 Q. Okay. By the way, did you inspect the food
12 facilities?

13 A. I did not.

14 Q. Okay. And you did not partake of any of the
15 food at the facility?

16 A. I did not.

17 Q. Okay. You didn't inspect the area for the
18 medical -- the medical area?

19 A. I did not.

20 Q. Okay. And when you went over to the area
21 where the vocational, the education was, you did not go
22 into the vocational rooms at all, did you?

23 A. Some were locked. We looked in and we looked
24 into the, I don't know if it is called horticulture,
25 but the gardening area.

1 Q. Okay. Now, when you indicated that they were
2 locked, Mr. Hinchliffe here offered to open those for
3 you, recalls he offered to open them, did he not?

4 A. He did.

5 Q. Okay. And you declined to do that, isn't
6 that correct?

7 A. That's true.

8 Q. Okay. You also declined to go out into the
9 horticultural area; is that correct?

10 A. I don't remember that being offered. I could
11 have gone out if I wanted to.

12 Q. Okay. It is correct, is it not, Mr. DeMuro,
13 that as far as seeing the particular facility, there
14 were no restrictions, you were allowed to go anywhere
15 you wanted to go, weren't you?

16 A. I think I testified on Direct other than
17 being able to see security logs, yes.

18 Q. Okay. I would ask have, since that time, the
19 Public Defender provided you with any of the restraint
20 logs?

21 A. No, I came in town last night and did not get
22 those logs.

23 Q. Okay. And again, we have a time problem, you
24 were not able to get in here any earlier than last
25 night?

1 A. Yesterday evening.

2 Q. Okay. Certainly it would have been a benefit
3 to you if you had been able to see those; correct?

4 A. I would have liked to have more time to
5 conduct this inspection, if the Court or the Department
6 would like to do that, I'd be happy to do that with the
7 team's people.

8 Q. Well, I -- frankly, we wouldn't be too
9 unhappy to allow you to do that, and I guess that is
10 one of the issues, isn't it, Mr. DeMuro, that normally
11 in this type of a case, you are going to be provided
12 well in advance with various logs, with depositions,
13 and so forth, in the typical situation that you
14 testify?

15 A. Not necessarily, no.

16 Q. Okay. But quite often, that's true, isn't it
17 not?

18 A. No, it's not. I would not say it's typical
19 at all.

20 Q. Okay. When was the last time that you
21 testified in a case in Florida?

22 A. I testified in a capital punishment case ---

23 Q. Excuse me. Let me rephrase it:

24 In a case involving either conditions of
25 confinement or the determination of what prison

1 facilities are like?

2 A. I have never testified to my knowledge in
3 Florida in Court.

4 Q. Oh, okay. Are you aware of all the rights of
5 discovery in Florida in terms of getting depositions
6 and so forth?

7 A. I make no presentation that I am an attorney.
8 If I might Counselor, doing institutional
9 reviews, depends on who the client is --

10 Q. Uh-huh.

11 A. --what the access point is. For the U.S.
12 Justice Department, I've been through ten facilities in
13 Georgia. There's not active litigation. It may be
14 considered pre-litigation, it probably will be settled.

15 For Cleveland, Cayuga County, I do it for the
16 County Commissioners themselves, you know, so --

17 Q. Okay. Now, with respect to the --

18 MR. ROSENTHAL: Judge, I just ask that the
19 witness be allowed to complete his answer, please.

20 MR. DAKAN: Well, Judge, I don't have any
21 problem with that.

22 THE WITNESS: There's one point I want to
23 make.

24 MR. DAKAN: Excuse me, let me just respond.

25 My only problem, Judge, is that I understand

1 this witness is not going to be available past
2 today and I just want to try to get to our points.

3 I don't think what he is talking about in
4 Cayuga County is particularly responsive to my
5 question.

6 THE HEARING OFFICER: You're asking him his
7 experience in doing this kind of work.

8 MR. DAKAN: Judge, I think my questions ---

9 THE HEARING OFFICER: If you want to withdraw
10 asking about the experience, move on to another
11 question.

12 MR. DAKAN: Okay.

13 BY MR. DAKAN:

14 Q. When you talked about the work for the
15 Department of Justice, those are usually situations
16 where justice is looking to perhaps file litigation
17 against the State or the local County as to conditions
18 in their facilities; is that correct?

19 A. That, and perhaps mediate a settlement, as in
20 Detroit.

21 Q. Okay.

22 Now, Mr. DeMuro, I know that you did talk
23 with or feel that you had no problem with talking with
24 the head of the Oxyurid Youth Developmental Camp or at
25 least someone in the Oxyurid Youth Development Camp?

1 A. I did not talk to the head of the Oxyurid
2 Youth Development Camps.

3 Q. Who did you talk to there?

4 A. I talked to Jerry Luze, who is the former
5 superintendent of EYDC --

6 Q. Uh-huh.

7 A. --and has recently been promoted, and I don't
8 know the term, but as he explained it, to the head of
9 the Delinquency Program.

10 Q. Okay. You, of course, did not notify the
11 Department that you were going to be talking to him?

12 A. I did not notify anybody that I was going to
13 talk to him.

14 Q. Okay. And to the best of your recollection,
15 is he an employee of the Department of Juvenile
16 Justice?

17 A. He is an employee of the Oxyurid Corporation.

18 Q. Okay.

19 A. And under contract or most of his -- I would
20 imagine most of his salary is subsidized through DJJ.

21 Q. Okay. In that regard then, I assume you also
22 talked to Jim Irving, who is the head of -- vice-
23 president of CSC?

24 A. I did not.

25 Q. Okay.

1 Did you talk with anyone from Dozier?

2 A. I talked to two staff from Dozier --

3 Q. Uh-huh.

4 A. --the superintendent and the deputy
5 superintendent.

6 Q. Okay. And those people are, of course, DJJ,
7 are they not?

8 A. They are absolutely DJJ.

9 Q. Did you call myself or Mr. Hinchliffe or
10 anybody else before you talked with them?

11 A. I did not.

12 Q. Okay.

13 So it is your position basically that you
14 could contact anybody within the Department to talk
15 about the issues that are in this case?

16 A. I did not talk about the issues broadly
17 defined in this case and I did not talk to anybody. I
18 talked to these two specific sets of people.

19 Q. Okay. I anticipate that this afternoon we
20 will be, pursuant to the request of the Public
21 Defender, doing a similar telephone deposition of Mr.
22 Jim Irving. I assume you are going to be here, so you
23 can hear what Mr. Irving is going to testify to?

24 A. I don't think I will be. I hope to be on a
25 plane to see my home family around 2:30 or 3:00.

1 I think that was known to at least both sets
2 of attorneys.

3 Q. Okay.

4 A. It is my -- by the way, it is my
5 understanding that Court was going to be over at
6 sometime early this afternoon.

7 Q. Okay. When are you going back?

8 A. I had originally planned to go back on a five
9 or 5:30 flight, but then I heard the Court was going to
10 adjourn early and in consult with the Council, I made
11 reservations on a 2:30 flight, which gets me home about
12 5:30 or 6:00 tonight.

13 Q. Fine. I believe that hopefully we will be
14 able to make Mr. Irving available around one o'clock or
15 so. So we would certainly invite you to be present for
16 that.

17 MR. ROSENTHAL: Judge, excuse me, this is
18 not questioning. I just ask that we go into
19 substantive matters.

20 THE HEARING OFFICER: Yeah, I mean ---

21 BY MR. DAKAN:

22 Q. It would be important for you, though, to
23 have testimony as to what the actual policies of CSC
24 and the Department are.

25 MR. ROSENTHAL: Now, Judge, this are

1 statements.

2 These are not questions.

3 MR. DAKAN: What is my question, Your Honor?

4 THE HEARING OFFICER: What would be the
5 point of getting that, if he is not coming back to
6 testify.

7 MR. DAKAN: Well, I think the point of that,
8 Judge, is that he got -- well -- let me ---

9 THE HEARING OFFICER: If he doesn't know
10 these various things, then obviously that cuts
11 into the magnitude of his opinion.

12 MR. DAKAN: Yes, my point exactly, Your
13 Honor, so I will withdraw the question.

14 BY MR. DAKAN:

15 Q. Have you been made or were you provided with
16 the information that the Public Defender's Office
17 received from Mr. Hinchliffe here?

18 A. Which information, Counselor?

19 Q. The telephone deposition that was taken of
20 him, as a matter of fact, the same day that we talked
21 with you?

22 A. No, sir.

23 Q. Okay. Have you been provided with the
24 telephone deposition ---

25 MR. ROSENTHAL: Excuse me, Judge.

1 MR. DAKAN: May I finish my question,
2 Your Honor.

3 MR. ROSENTHAL: Let me interject, Judge --
4 let me interject one thing?

5 None of these things have been transcribed.
6 In fact, some, we dispensed with any Reporter
7 because we were given very short notice to even
8 have these conversations.

9 So the answer is they don't exist.

10 THE HEARING OFFICER: The information --
11 the information that the witness has is always
12 relevant in terms of assessing the witness'
13 opinion.

14 MR. ROSENTHAL: Absolutely, Judge.

15 MR. DAKAN: Now, Judge, I recognize ---

16 THE HEARING OFFICER: Overruled.

17 MR. DAKAN: All right. But, Judge, I ---

18 THE HEARING OFFICER: Overruled, please.

19 MR. DAKAN: All right, Judge.

20 I would ask that I not be interrupted,
21 though.

22 BY MR. DAKAN:

23 Q. All right, sir, let me get back to the
24 question.

25 Were you provided or did you sit in on the

1 conversations with Mr. Rex Uberman?

2 A. No, I did not.

3 Q. Okay.

4 So you are not aware of what the Department's
5 position is on this; is that correct?

6 A. I'm only aware of -- for the Department's
7 position, vis-a-vis the documents that were entered
8 into the Court record this morning. That is the nine
9 or ten things that Counsel for the Public Defender
10 identified this morning.

11 Q. Okay, thank you, sir.

12 With respect to the youths that you
13 interviewed, are you aware that there is in Florida a
14 requirement of confidentiality in terms of
15 identification of youths and providing you with
16 information from youths?

17 A. I don't know the specific statute, but I
18 imagine it tracks other statutes, yes.

19 Q. Okay. And would you agree, sir, that it
20 would be the responsibility of the Department, absent a
21 Court Order, to protect that confidentiality?

22 A. Yes.

23 Q. Okay. The youth that you spoke with,
24 included these gentlemen here, and how many others did
25 you talk with?

1 A. I talked to a total of eleven youngsters --
2 with a total of eleven youngsters.

3 Q. All right. And can you tell us approximately
4 how long did you speak with each one of those
5 individuals?

6 A. Two of the youngsters I spoke with, were done
7 in a group, they were new intakes.

8 Every interview lasted approximately and we
9 timed this for fifteen to twenty-five minutes,
10 depending.

11 Q. All right. And you have discussed to a great
12 extent the various conditions that you talked about,
13 the information that you received from those came
14 primarily from the youths; is that correct?

15 A. To a great extent.

16 Q. Okay. Did the -- are you aware of what the
17 concept of quality -- excuse me, not quality assurance,
18 but the Inspector General's responsibilities are in the
19 Department?

20 A. I have not reviewed the statute for the
21 Inspector General's Office.

22 Q. Okay. Did the Office of the Public Defender
23 provide you with any copies of reports by the
24 Department's Inspector General's office concerning
25 allegations of abuse?

1 A. I have a copy of the SORT Report --

2 Q. Uh-huh.

3 A. --and a follow-up to the SORT Report that
4 goes back to May and then June.

5 I do not believe they were authored by the
6 Inspector General, but I would have to look.

7 Q. Okay.

8 A. The SORT Report, I believe came out of Mr.
9 Hinchliffe's operations and then there was a contractor
10 monitor follow-up, but I don't know who was the
11 auspices of those.

12 Q. Okay.

13 A. I don't know what auspices that follow-up
14 came from.

15 Q. All right. So is it fair to say and I
16 appreciate you being patient with me, is it fair to say
17 then that you never received any individual reports of
18 investigations concerning allegations by any of these
19 youths, into the conditions that they testified to?

20 A. To my knowledge, that's a correct statement.

21 Q. Okay. If, in fact, the statements that the
22 youths provided to you are untrue with respect to each
23 of these allegations, that would certainly affect the
24 validity of the opinions that you made today; is it not
25 correct?

1 A. To a degree, yes.

2 Q. Now, let's start with the first situations
3 here. You have indicated, for example, that the staff
4 have -- well, let's start with the negative subcultures
5 that you have testified to.

6 I believe that the Pahokee facility manual
7 has been put into evidence and you have had the
8 opportunity to review that; is that correct?

9 A. I reviewed the Pahokee manual.

10 Q. Okay. Would you please tell the Court what
11 provision of the Pahokee manual authorizes negative
12 subcultures?

13 A. Well, I would be shocked if any provision
14 did.

15 Q. Okay. And would you also be shocked if, for
16 example, any of the provisions allowed this -- well,
17 first of all, is there any provision in there that
18 permits the staff to curse at and treat the individual
19 in the use of ways that you have heard testified to
20 today?

21 A. I would hope not.

22 Q. Okay. You are not aware of any that you saw;
23 is that correct?

24 A. I would hope not and I am not aware of any
25 that I recollect seeing.

1 Q. All right.

2 A. In this manual or any other manual.

3 Q. Fine. Thank you.

4 That would also be true of inappropriate use
5 of force, isolation, and all of those items that you
6 have talked about?

7 A. I would have to -- please don't make that an
8 open, et cetera -- I would have to look at each of
9 those very carefully, particularly around the use of
10 force and use of restraints, due process, grievance
11 hearing, et cetera, et cetera.

12 So I don't want to make this a carte blanche
13 statement.

14 Q. Okay. But to the best of your knowledge, as
15 to the items -- and I understand that and I just want
16 to be clear about that -- to the best of your
17 knowledge, as you sit here today, you are not aware of
18 any provisions that would authorize any of the things
19 that you have testified to; is that correct?

20 A. No, I don't want to make this testimony to
21 that effect.

22 Q. Ah, okay. Well, let's go through and I'm
23 sorry to take up the time, but I guess we'll go ahead
24 and do that.

25 Are you aware of what the conditions are that

1 permit use of the confinement area?

2 A. I am aware of the policy statements.

3 Q. Okay. And policy statements provide that
4 confinement can only be used in certain circumstances,
5 is that correct?

6 A. Yes.

7 Q. Okay. One of those circumstances is escape;
8 correct?

9 A. I will -- if you make the presentation that
10 is in the policy, I will agree with it, if you want to
11 take or if we can look at the policy, so we can take a
12 look at it.

13 Q. Sure. And again I'll see if I can find those
14 for you; but you wouldn't disagree ---

15 THE HEARING OFFICER: Maybe the two sides can
16 stipulate, if we make an inaccurate statement for
17 the policies rather than having to waste time
18 looking at those.

19 MR. ROSENTHAL: I would stipulate further,
20 Judge, that the policies are what the policies
21 are.

22 MR. DAKAN: Uh-huh, okay.

23 So we just need to go through them a little
24 bit.

25 BY MR. DAKAN:

1 Q. Is it appropriate to take steps to prevent
2 youths from escaping from facilities?

3 A. Absolutely.

4 Q. Okay. And part of that is because as I am
5 sure you aware, there is a major drive in the Florida
6 legislation to protect the public; correct?

7 A. Yes.

8 Q. Okay. And one of the important things to do,
9 particularly with dangerous youths, is to -- is to
10 prevent them from escaping and getting back to the
11 public; correct?

12 A. Would you repeat that question, please?

13 Q. Okay. Well, I think the bottom line is
14 simply: We don't want youths that are a moderate to
15 high risk of recommitting or reoffending, doing harm to
16 the public, to escape from facilities; correct?

17 A. I believe we don't want kids to walk away
18 from treatment programs or facilities, yes.

19 Q. Okay. And it would therefore, for example,
20 if a youth was placed in a small Halfway house and that
21 youth escaped from a facility, I'm assuming you would
22 not recommend that that youth be placed back in that
23 same facility, where he can walk away again, would you?

24 A. You might under certain circumstances.

25 Q. Okay.

1 of the requirements for the Department is to assure not
2 only the safety of its staff, but the safety of the
3 other youth that are there and the safety of the youth
4 that may be involved in violent behavior; correct?

5 A. I think I said in my last question: To
6 establish trust and a good treatment situation, you
7 must have safety.

8 Q. Okay.

9 A. Safety is the paramount importance in any
10 facility, particularly a correctional facility.

11 Q. All right. Would it be a fair statement then
12 that in order to protect the youth and staff and so
13 forth, that you may on occasion need to segregate a
14 violent youth from other youth and from staff?

15 A. Depending on the facility, the size, the
16 climate of the facility, certainly -- and by the way,
17 that was why I talked to Dozier and Oxcart was to find
18 out how they were separating kids who were acting out.

19 Were they still doing it as I knew them to be
20 doing it six years ago. And that was the purpose of my
21 calling them, not to discuss this case with them. For
22 that specific reason.

23 Q. Uh-huh, sure. I don't have any problem with
24 that.

25 Okay. So I think we have covered all of

1 those particular areas.

2 Is it -- my understanding of your experience
3 and expertise and at least the titles of some of your
4 writings that there is ---

5 MR. ROSENTHAL: Judge, I object to phrasings,
6 of Mr. Dakan's understanding, because that's not
7 relevant to anything here.

8 MR. DAKAN: Well, I'll rephrase the question,
9 then.

10 BY MR. DAKAN:

11 Q. It is appropriate, for example, to take the
12 type of youth that we are talking about, who may be a
13 risk for disruption and treat that youth separately
14 from the youth that we might wish to put into a very
15 low security community-oriented facility, such as a
16 Halfway?

17 A. With all due difference to you, Counselor, if
18 you pointed to me to the writings or the paper you have
19 in mind, I'd be happy to go into this matter.

20 For violent offenders, there's no doubt about
21 that. For serious and violent offenders, I have
22 written and designed small closed secured programs for
23 them, which were twenty or twenty-five beds and had the
24 ability to handle kids appropriately with some
25 seclusion.

1 Q. Uh-huh. Okay.

2 A. But that was for a specific, in fact, going
3 back to the Federal Justice Department, it is my
4 understanding they would be close to Level Ten kids,
5 the analogous Level Ten kids here or kids who were
6 being transferred to the adult system.

7 Q. Uh-huh. Well, wouldn't it be appropriate for
8 a Department, for example, to make a determination that
9 it does not wish to put in youths who, while at the
10 same time might not be appropriate for a community, a
11 low-security Halfway house in with those Level Ten
12 kids?

13 A. Yeah, that would be the purpose of your
14 moderate and high-risk classification.

15 Q. Absolutely.

16 And would you agree that even within the
17 moderate risk classification, it would be appropriate
18 for a Department to make determinations that some
19 youths, who are moderate risks, should go into low
20 security or staff-secured facilities and some should go
21 into facilities with greater security because of risks?

22 A. I am not trying to make a presentation about
23 the Department's authority at all. Certainly the
24 Department has the authority to put up a classification
25 system and a spectrum of services.

1 My presentation is simply and very basic that
2 the Level Six Pahokee program that I saw doesn't
3 comport to what I believe a Level Six program ought to
4 comport to.

5 Q. I understand that, and I understand that.

6 But you would not disagree that the statute,
7 as you read it, allows for fencing; does it not?

8 A. I believe the statute allows it for a DIP
9 program here.

10 THE HEARING OFFICER: Let me, let me
11 interrupt, because I don't want to lose a point
12 which is a question that was answered, it really
13 wasn't answered. It was a question of this whole
14 debate.

15 What Mr. Dakan asked was: Is appropriate
16 on a moderate risk for the Department to set up
17 sub-categories of moderate risk, where they would
18 put some children in a more restrictive
19 environment than other child and that they could
20 feel that there would be certain children that
21 would need a certain extra degree of security and
22 certain ones that can be given the latitude
23 to ---

24 THE WITNESS: I understand the question.

25 MR. DAKAN: And the answer was yes, was it

1 not?

2 THE WITNESS: Yes, in general terms. You
3 would have to look at how your sub-classification
4 worked.

5 In other words, on what basis were you
6 making that decision and what basis was the
7 treatment reaching the kids needs there.

8 Level Six has a kind of treatment need
9 too. So if you frame that you needed an array.
10 We do have an array.

11 We have the Eckerd Youth Camps, which are for
12 emotionally disturbed kids; we have certain kinds
13 of Halfway houses; we have Halfway houses with
14 kids who have duo-diagnosed ---

15 So we have this on the treatment side. We
16 might have it on the custody side too, but you
17 want to make sure that you were looking at the
18 individual needs of kids and the classification
19 system on both the security level and the
20 treatment level.

21 Q. Okay.

22 A. So, the answer is yes, in that context.

23 Q. All right, very good.

24 THE HEARING OFFICER: And then -- and then
25 based on that, assuming for a moment that this

1 Court has no authority to second-guess the
2 Department in making those decisions, it's still
3 though would be, you know, it obviously would have
4 be appropriate then for the Department without the
5 Court's supervision to make the appropriate
6 decisions?

7 THE WITNESS: I'm not sure I understand your
8 question, Your Honor. Obviously ---

9 THE HEARING OFFICER: There's case law in
10 the State of Florida that says that -- that if an
11 institution is moderate risk, it is up to the
12 Department to decide whether or not the child is
13 appropriate placed within the moderate risk.

14 And if it's all right on the moderate risk to
15 have a facility with, say, no psychological
16 services, just assuming that for a moment, and you
17 have a child who was psychotic, and the Department
18 puts such a child into this institution with no
19 psychological services, there seems to be a gap in
20 the law that may restrict the Court, at least
21 under the remedy brought by the Public Defender in
22 this case to move that child, say, to an
23 institution where the child would receive
24 psychological services?

25 THE WITNESS: I am not an authority on the

1 Florida statutes. So having said that, I'll
2 try to answer the question.

3 It is appropriate if you have different
4 levels of kids in Level Six to program for them
5 individually and in pulling them together
6 collectively as best you can.

7 That seems to be clear in the array of
8 services you have already in Level Six. As I
9 said, you have a Eckerd Youth Camp and you have a
10 control. So you have this variety of services
11 within that category. That that's certainly
12 appropriate in good correctional management.

13 These are fairly large graded levels: below,
14 moderate, high or low, medium, moderate, high.

15 So you are going to have a range within
16 that? The answer to that is yes. Within that
17 range, you have different treatment and you might
18 have different levels of staff and hardware
19 supervision? The answer to that is yes.

20 BY MR. DAKAN:

21 Q. To follow up on that, Mr. DeMuro, I believe
22 you also have had the opportunity at any rate to review
23 the moderate risk manuals that the Department itself
24 prepared, moderate risk residential manuals?

25 A. If it's in that stack of documents that

1 Counsel entered into in the Court proceedings this
2 morning, I reviewed them.

3 Q. All right. Are you aware of the fact that
4 essentially, of course, Court has those and have
5 reviewed them, that those manuals provide that the
6 types of treatment regimes, the education that needs to
7 be provided and so forth are uniform throughout Level
8 Six, moderate risk, whether it's Eckerd, whether it's
9 Pahokee, whether it's I Care, Baypoint?

10 A. I'm not aware of that and I don't believe
11 that's the case, because none of those programs have
12 very different levels of length of stay.

13 Some can be as less as 90 to 120 days. Some
14 can be -- the Eckerd Youth Camps could be up to a year,
15 so I think the standard would say that there is a level
16 education might be generally described, but there are
17 different, qualitative differences in the 90 day
18 educational program versus a year educational program.

19 Q. Okay. But would you agree, though, that, as
20 a matter of fact, it's the obligation of the Department
21 to make sure that, you know, appropriate education is
22 provided to every youth that comes, regardless of the
23 facility?

24 A. Certainly.

25 Q. Okay. Now that also would be true in terms

1 of vocational needs and in terms of health needs and
2 rehabilitative needs, would it not?

3 A. Yes.

4 Q. Okay. And in fact would you agree that for
5 the most part, apart from the question of risk to the
6 public and risk for escape, and so forth that to a
7 great extent the needs of a youth in the juvenile
8 system is going to be pretty much the same in terms of
9 the family, in terms of rehabilitative needs and so
10 forth, whether in the level human risk, non-
11 residential, right through maximum risk?

12 A. The description of the needs are similar, but
13 the needs of individual youngsters, the four in the
14 back of the room, the hundred and some in the Detention
15 Center, very greatly from kid-to-kid --

16 Q. Uh-huh.

17 A. --very extremely, you know, very greatly from
18 kid-to-kid.

19 Q. Absolutely.

20 Would you also agree that to a certain extent
21 the ability of any department, whether it's the
22 Department of Juvenile Justice here or in Pennsylvania
23 or wherever is limited by the amount of funds that are
24 received by the legislature?

25 A. I think it's a factor. I don't think it's a

1 limiting factor. Missouri has a very limited budget
2 and has one of the better programs in the country.

3 Q. Okay. Missouri doesn't have the population
4 that the Florida does either, does it?

5 A. St. Louis and Kansas City are very tough
6 cities.

7 Q. They are indeed and having been raised in
8 that part of the country, I know exactly what you mean.

9 Would you agree though from based on your
10 training and experience that it is the legislature and
11 not the Department or the judiciary that determines
12 priorities in terms of how youths will be treated
13 within a system?

14 A. I don't pretend to know the workings of DJJ
15 or its incarnation in HRS, but it is my understanding
16 that in those systems if they parallel other state
17 systems, a legislative request is made, priorities are
18 set initially by the secretary or the director,
19 submitted to the legislature.

20 And there is an advise and a consent in a
21 final signoff through the ways-and-means process.

22 Now, I haven't studied your processes here
23 for a great deal of time, but it's not a -- I don't
24 think it's a unilateral process.

25 The executive branch proposes, prioritizes,

1 presents a budget, and when it gets those budgets, then
2 can go back and indeed ask for exceptions to those
3 budgets and rearrangements.

4 So, it's not a -- it's not a legislatively
5 run system.

6 Q. Ah.

7 A. It's a legislatively funded and mandated
8 system --

9 Q. Okay.

10 A. --and there are differences between the
11 executive and legislative branches.

12 Q. Perhaps I'm mistaken then, but are you saying
13 and I am understanding you to say that that your
14 understanding is, is that ---

15 MR. ROSENTHAL: Judge, objection to the
16 phrasing.

17 THE HEARING OFFICER: I don't have any
18 trouble with it. Go ahead, continue, continue.

19 BY MR. DAKAN:

20 Q. Well, I think that's a legal question at any
21 rate.

22 Once that process is through, let me ask you
23 this: What is your experience as to who has the final
24 say?

25 A. Well, the legislature gives you a budget and

1 you must live within that budget or you go back and ask
2 for exceptions and revisions.

3 Q. Okay. Were you aware or did anyone make you
4 aware that in this particular case, the Department of
5 Juvenile Justice was not the initiator of the Polk and
6 Pahokee facilities?

7 A. I've heard conversations about the gestation
8 of this issue or problems, or however you want to
9 characterize it, I have no formal documentation.

10 I didn't do interviews, I didn't research
11 the, you know, two facilities were built, my
12 understanding, for youthful offenders, they were going
13 to be privatized, and they were presented to the
14 Department.

15 Q. Okay.

16 A. I mean that's my understanding, but that's
17 more, you know, common knowledge to me. I didn't have
18 a conversation, one conversation or one piece of paper.

19 Q. Yeah, you would not disagree then with any
20 testimony that it is actually the Governor's office
21 that that, in essence, started the ball rolling to make
22 those facilities DJJ facilities?

23 A. I can't make a characterization one way or
24 another. I don't disagree. I don't agree.

25 Q. I'm sorry, didn't mean to cut you off.

1 A. Where it came from, I don't know.

2 Q. Okay. Boot camps are usually, at least in
3 Florida, relatively secured facilities, are they not?

4 A. Secured by location generally.

5 Q. Okay. And that would include barbed wire
6 fences and the whole bit?

7 A. There are a lot of boot camps that don't have
8 that much wire fences.

9 Q. Okay. Has ---

10 A. I don't know the Florida boot camps, except
11 for one.

12 Q. Do you know that Florida boot camps have been
13 made moderate risk facilities in Florida in the last
14 year?

15 A. I believe they are in different categories.

16 Q. I see.

17 A. If your '96 manual is reflective, I think
18 they are in at least two or three categories.

19 Q. All right.

20 A. That is boot camps, boot camps appear in two
21 or three.

22 Q. Now, you mentioned as it is the DIP that are
23 downstairs here?

24 A. It used to be.

25 Q. Okay. I can represent to you that it still

1 is. Do you know whether -- you have not had the
2 opportunity to inspect that facility, I take it?

3 A. I initially went into the facility years ago
4 with Judge Gladstone, when he -- I believe he helped
5 set it up and subsequently visited it, oh, I wouldn't
6 say regularly, but a couple, three times as a model
7 that both has security and community focus to it.

8 Q. I see, okay, yeah.

9 A. But that's --

10 Q. Four, five, six years ago?

11 A. --at least four, probably five.

12 Q. Okay. Do you know whether or not today the
13 youths, they get very, very short haircuts in DIP?

14 A. I have not been there. I would have liked to
15 spend some time there.

16 Q. Okay. So you don't know that, you don't know
17 whether or not they wear uniforms?

18 A. I have not been in DIP in four, at least four
19 years.

20 Q. Okay. And yet you haven't actually inspected
21 any of the moderate risk facilities in Florida within
22 the last year, other than the Pahokee facility, is that
23 correct?

24 A. The only other facility I have been in is the
25 Leon County Boot Camp.

1 Q. I see. And when was the last time that you
2 were in the Leon County Boot Camp?

3 A. Perhaps, over a year ago.

4 Q. Okay. And at that time, they had uniforms,
5 did they not?

6 A. I'd have to check my notes, but I believe
7 they did.

8 Q. Okay. And to the best of your recollection
9 is that they had very, very short haircuts?

10 A. Yes.

11 Q. Okay. Had wire around it, with the barbed
12 wire?

13 A. Certainly, it was in the middle of a jail.

14 Q. Okay. They ---

15 A. I thought it was 24 kids --

16 Q. Okay.

17 A. --thirty kids.

18 Q. I believe you have talked about the fact that
19 we have, of course, 48 youths in each of the pods here.

20 Do you know whether or not those are broken
21 into smaller groups, for example, group treatment at
22 Pahokee?

23 A. I believe they are broken into groups of 12
24 for movements and perhaps for programming.

25 The school, I believe it's groups of 12.

1 Q. Okay. Apart from the other considerations
2 that we have talked about today, is it appropriate to
3 have groups of roughly 12 for purposes of education,
4 therapy, group therapy and so forth?

5 A. Depending on how many groups are living
6 together; depending on the staff interactions; the
7 quality of treatment.

8 Q. Uh-huh.

9 A. There is no magic number. Some grouping is
10 8; some is 6; some is 10, 12.

11 Q. Okay. Again, that's something that experts
12 can disagree on, can they not?

13 A. I don't disagree with groups of 12.

14 Q. Okay. You don't disagree with groups of 25
15 to 30 for living again, assuming other factors are
16 properly taken care of?

17 A. Where and how.

18 Q. Uh-huh. Let's strike the question. It
19 wasn't a very good one.

20 Which ---

21 MR. ROSENTHAL: Excuse me, Judge. That
22 question was asked and answered.

23 I'm not sure why Mr. Dakan is saying,
24 "Strike the question."

25 MR. DAKAN: I thought he was, was not ---

1 THE WITNESS: I admit it depended on where
2 on how, the group of 30 where and how.

3 MR. DAKAN: Oh, okay, all right.

4 BY MR. DAKAN:

5 Q. Now, we've talked here considerably about
6 things such as the use of profanity, the poor
7 relationships, high turnover, and those things.

8 Isn't it very similar to the kinds of
9 problems that you were monitoring in the Bobby M. Case,
10 out of Dozier; is that correct?

11 A. More similar to Okeechobee than Dozier.
12 Dozier has -- MaryAnn has a very stable staff
13 composition. There's not a lot of turnover at Dozier.
14 There's not much more turnover there.

15 Q. Okay. Mr. DeMuro, would it be fair to say
16 that the problems and let me specify the ones that I'm
17 looking at. Let us start, for example, throwing cold
18 water on youths that are in confinement.

19 Is that a correctable problem?

20 A. Certainly.

21 Q. Okay. And that would be done either by an
22 outside monitor, such as yourself; maybe Court-
23 appointed; it could be done by quality assurance and
24 monitoring by, for example, the Department, could it
25 not?

1 A. Sure. Yes.

2 Q. All right. Okay.

3 Staff on youth abuse. By the way, are you
4 familiar with the requirement in Florida that if anyone
5 knows of evidence of abuse, they are required to report
6 that to the Department of Children and Family Services?

7 A. I am aware of it. I'm also aware of some
8 folks trying to get that changed in some instances.

9 Q. Okay. But anyway, getting back to that, that
10 is also something that could be corrected, could it
11 not?

12 A. Depending on place and commitment, yes.

13 Q. Youth on youth. Is that something that could
14 also be corrected?

15 A. It's more difficult in larger facilities.

16 Q. Okay. But it is something that could be
17 corrected with appropriate monitoring or internal
18 changes and so forth?

19 A. It's more difficult a larger aggregate
20 facilities.

21 Q. Okay, but it can be corrected?

22 A. I think I'm going to stand on my answer. It
23 is more difficult to correct when larger.

24 Q. By the way, would that be true in, for
25 example, a halfway house, two, 300-bed halfway house?

1 A. I think by a two, 300-bed halfway house is an
2 oxymoron. I don't think it exists.

3 Q. I see. Okay.

4 Are you aware of any over a hundred and fifty
5 that may have been applied for in the State of Florida?

6 A. Nothing would shock me.

7 Q. Okay. So, I want to ask you something too in
8 terms of family visitations and so forth.

9 Is it appropriate to send a child twelve,
10 1400 miles away?

11 A. You mean to Glenn Mills?

12 Q. Exactly.

13 A. Depending on the case. Not as a pattern, not
14 when it gets into a pattern of it.

15 If a youngster is looking at perhaps being
16 transferred or waived in the adult court, if the
17 youngster is very good athletically, reasonably
18 academically, is well-spoken, can handle peer
19 confrontations, and can make it in a small grouping --

20 Q. Uh-huh.

21 A. --it might be appropriate in that case. They
22 can start sending lots and lots of kids away.

23 Q. It is going to be darn hard for a family in
24 Miami to visit a kid in Glenn Mills, wouldn't it?

25 A. I represent that is a hard visit in Glenn

1 Mills and Pahokee; but hard in Pahokee too.

2 Q. Okay. I can't disagree with that.

3 Let's see. I think you thought youth again,
4 you have indicated that may be where we picked up.

5 Now, your subcultures, are those something
6 that can be corrected with appropriate action and
7 oversight?

8 A. Extremely difficult in some environmental
9 situations. And, in fact, you mentioned Bobby M. in
10 Dozier, and I do not want to turn this into a
11 discussion of the Bobby M. in Dozier, Eckerd, but part
12 of that was an architectural reshaping of both those
13 facilities.

14 Q. Uh-huh.

15 A. As George, Mr. Hinchliffe well knows.

16 In the 15 to 18 bed facilities, which had a
17 lot of programming at that facility -- at that, really
18 if you want to call it cottage or halfway house or a
19 series of halfway houses, where lots of programming
20 emanating right from that group.

21 Q. Uh-huh.

22 A. In my conversations with the Dozier staff
23 over the phone, that you mentioned, I asked were they
24 still in small groupings?

25 And they made the representation they are

1 going to go up to groups of 20.

2 Q. Uh-huh.

3 A. That their cottages have gotten up to groups
4 of 20, but would go no further.

5 Q. Okay.

6 A. That's the representation they made to me.

7 Q. All right.

8 Are there other experts to your knowledge
9 that would or that have certainly postulated that it is
10 appropriate to have groups such as high as 45 to 50
11 youths in there?

12 A. There could be and again that's looking at
13 the age and the situation, what have you.

14 Q. Certainly, there are lot of chapters to go
15 into.

16 A. Some of the youngsters were committed at the
17 age of 13.

18 Q. Are you aware by the way that the commitment
19 to Level Six is actually done by the judges and not by
20 the Department?

21 A. My understanding, after reading those parts
22 of the law that were sent to me by the Counsel -- by
23 the Public Defender's Office and the Commitment
24 managers, is that the Judge sets the level.

25 Q. Correct. Uh-huh.

1 A. The Department establishes where in that
2 level.

3 Q. Uh-huh.

4 A. I mean I may be oversimplifying, but that's
5 my understanding.

6 Q. Uh-huh, okay.

7 A lock-down situation, where youths are
8 locked down for hours at a time. That's something that
9 is easily correctable, isn't it, by simply adjusting
10 staff, firing those that do it and so forth?

11 A. It is not a matter of removable parts,
12 Counselor.

13 Q. Uh-huh.

14 A. It is not a matter of removable parts. As we
15 talked about the subculture, it's about establishing a
16 positive culture.

17 And putting up, well, let me -- the question
18 is more complicated than just a procedural or a manual
19 question. It is a culture of facility. It is a
20 culture -- the facilities have to be controlled.

21 There have to be positive consequences and
22 negative consequences. And it's not a matter of just
23 writing policy and changing the parts.

24 I would invite you to talk to Din Pate or Roy
25 McKay who turned the culture of Dozier around or Jerry

1 Laughs, who turned the culture of EYDC around.

2 Q. Okay. So, that can be done within the
3 facility, can it not?

4 A. It could be done.

5 Q. Uh-huh, okay.

6 Are you aware, by the way, of lock-down, I
7 hate to go back through this, is there anything in
8 either the DJJ manuals or the Pahokee facilities that
9 authorize use of lock-downs to the extent that have
10 been testified to?

11 A. In the policy manual, I don't believe so, but
12 I haven't reviewed that specifically.

13 Q. Okay. And again, maybe I wasn't clear as to
14 your answer, but now as I understand lock-downs were to
15 put all the kids in their rooms and leave them there
16 for a great lengths of time; correct?

17 A. If you want to define it that way, you are
18 not talking about confinement.

19 Q. Uh-huh.

20 A. I don't believe there's anything that
21 authorizes group punishment either.

22 Q. Okay, I would agree with that.

23 And would it not be a fair statement, Mr.
24 DeMuro, that that can be resolved by monitoring an
25 oversight that prevents and prohibits individual staff

1 from doing group punishment and doing group types lock-
2 downs?

3 A. I don't agree with that characterization.

4 Q. How would you otherwise do that?

5 It is the staff that's doing it, is it not?

6 A. Yes, but all the staff aren't bad or evil
7 people.

8 Q. Ah, okay.

9 A. No one is saying or suggesting that.

10 Q. All right.

11 A. It's a matter of training; it's a matter
12 of ---

13 MR. ROSENTHAL: Excuse me. Just that the
14 witness be permitted to complete his answer
15 without constant comments by Counsel in the middle
16 of the answer.

17 MR. DAKAN: I apologize to Your Honor if
18 that's what's happening.

19 I'm sometimes just ---

20 THE HEARING OFFICER: All right, all right.
21 You know, this is an important answer.

22 MR. DAKAN: I agree, Judge, so ---

23 THE WITNESS: Could re-ask the question,
24 Counselor?

25 BY MR. DAKAN:

1 Q. Wait, I'll try as best I can.

2 I think my question first of all was:

3 If an individual staff person, assuming there
4 is no policy, let me start it that way.

5 Can we assume for the sake of my question
6 that there is not a policy either by DJJ or by Pahokee
7 that says you can lock down kids and have group
8 punishment?

9 A. I would hope that's true.

10 Q. Okay.

11 A. We assume it that by policy, that's true.

12 Q. Good. Can we also assume then that some
13 individual staff or staff members -- could be more than
14 one, even supervisors -- are doing this, are causing
15 this to happen?

16 A. Are we still on hypothetical?

17 Q. Yes.

18 A. We certainly could assume that.

19 Q. Okay, if that were true, then maybe I'm
20 missing something here, but isn't it a simple matter of
21 providing the necessary monitoring and oversight and
22 training, I agree with you, to make sure that does not
23 happen?

24 A. No.

25 Q. What else would you have to do?

1 A. You need to make sure your programs address
2 the needs of kids.

3 Q. Uh-huh.

4 A. It's a whole array of things you need to do,
5 which kind is kind of an inverse of what I testified
6 to.

7 Q. I understand that, but within ---

8 A. The size of the facility; the location of the
9 facility; the connection to family. The whole issues
10 that you want to take and factor in.

11 These turnarounds can happen. It happened
12 recently in Sacramento, California.

13 MR. DAKAN: Well, Judge, I'm going to move to
14 strike the answer as not being responsive.

15 And perhaps I have not been clear.

16 THE HEARING OFFICER: Denied.

17 BY MR. DAKAN:

18 Q. What I'm trying to do is: With a lockdown,
19 now the lockdown, as I understand it, you put all the
20 kids in, correct, and you don't let them out as
21 punishment?

22 A. Are you talking about group punishment now,
23 not the confinement unit?

24 Q. Uh-huh, correct.

25 A. Yes.

1 Q. Okay. If I'm running the staff and Mr.
2 Hinchliffe here is one of my workers down there and I
3 know that Mr. Hinchliffe is locking these kids down,
4 all right, I find out, can I stop the lockdowns by
5 simply getting rid of Mr. Hinchliffe?

6 A. Probably not.

7 Q. Why not?

8 A. Because staff need to have controls and kids
9 need to understand the structure, so there needs to be
10 a program put in place, there needs to be put training
11 put in place.

12 It's not just a matter of supervisory
13 control. This is a complicated mall issue.

14 Q. I see, okay.

15 But we could put training in place, can we
16 not?

17 A. I assume.

18 Q. We can put policy in place, can we not?

19 A. I think I said it's not just a matter of
20 policy, but you have put policy in place.

21 Q. Okay.

22 And we can address individually the entire
23 mall of needs that go into that, can we not?

24 A. More difficult in a larger facility, but,
25 yes, you could.

1 Q. Okay. But you can see that it is not
2 impossible to do that?

3 A. I can see that it is not impossible to do
4 that, Counselor.

5 Q. Okay. So everything that you have testified
6 to with the exception of size, or the exception of
7 where the facility is located, out in the cane fields,
8 those are correctable problems depending on oversight,
9 depending on the things we have discussed, the training
10 and so forth; is that not correct?

11 A. Are we talking about Level Six youngsters?

12 Q. We are talking about Pahokee and moderate
13 risk facilities?

14 A. I don't believe, and I think I said in Direct
15 that it's correctable with moderate, with Level Six
16 kids at that facility for the moderate risk youngsters
17 in a 350-bed facility that is constructed as a prison.

18 Q. Uh-huh.

19 A. That doesn't have the appropriate services
20 that we talked about.

21 Q. I see, okay.

22 Am I getting the feeling here that you are
23 philosophically opposed to large programs?

24 A. We have to define what we mean by "large"?

25 Q. Over 100 beds.

1 A. No.

2 Q. Okay. How about 200 beds?

3 A. As one of my mentor's said, when the
4 superintendent or director does not know the name of
5 every kid and his worker, you are in trouble.

6 So if someone can know the 125 kids and know
7 who the worker is, then on a juvenile facility, I think
8 we can go with that.

9 It gets to be -- I had this conversation with
10 Roy McKay, "How large is it going to get, Roy?"

11 "It is not going to go more than 192 and the
12 kids are going to live in groups of 20."

13 That's a Level Eight program.

14 I understand the economies of size.

15 Q. Uh-huh.

16 Okay, and the economy of size is determined,
17 in part, by what the legislature tells us to do, isn't
18 it?

19 A. That, with length of stay.

20 Q. Uh-huh.

21 A. Length of stay is an important variable here,
22 particularly for Level Six. The longer you stay, the
23 more expensive it is and the fewer Level Six kids you
24 can handle.

25 Q. Okay. I'm going to go back for just a minute

1 as far as that.

2 It has been some mention here with respect to
3 specific needs, educational needs of a specific child,
4 psychological problems with the use of psychotropics
5 and so forth --

6 A. Family needs.

7 Q. Right.

8 --and family needs, are you aware of anything
9 in the policy that that says that the family
10 relationship is not to be or is to be discouraged?

11 A. I would hope it is not in the policy.

12 Q. Okay. And in fact are you aware or isn't it
13 true that both of the Department's policy as well as
14 the Pahokee policy is to encourage the relationship
15 between the family and the child?

16 A. That may be a matter of policy.

17 Q. Okay. Are you aware and is it not true that
18 the DJJ and Pahokee manuals both encourage the
19 appropriate mental health and physical health needs of
20 each and every child in that facility?

21 A. I have to refer to the specific parts of the
22 manual you are talking about.

23 Q. All right.

24 A. I believe as a consulting psychiatrist for
25 three hours a week ---

1 Q. You do not disagree that ---

2 A. --I believe there is a turnover in the
3 counseling program.

4 Q. Turnover is an administrative problem,
5 though, is it not?

6 A. It is a location problem, too.

7 Q. Okay. But that is not something that is a
8 policy of either the Department at Pahokee to provide
9 for high turnover, is it?

10 A. I can be addressed in many ways. The
11 retention and resilience of staff is an important
12 variable in a treatment milieu.

13 Q. Okay. It's not unusual, for example, Glenn
14 Mills is kind of out in the country, isn't it?

15 A. Not that far. It's a forty-five minute drive
16 from Philadelphia.

17 Q. Okay. How far is Pahokee to West Palm Beach?

18 A. An hour and five minutes.

19 Q. Okay.

20 A. Delaware County is one of the wealthiest
21 counties in America, I believe.

22 Q. I'm sorry, which county?

23 A. Delaware County --

24 Q. Uh-huh.

25 A. --that's where Glenn Mills is situated.

1 Q. West Palm isn't. It's far behind.

2 A. Maybe not.

3 Q. Okay. So it is about twenty minute more
4 drive from West Palm to Pahokee; correct?

5 A. I'd have to, you know, I'm not holding Glenn
6 Mills out here as the model here.

7 Q. Ah, okay.

8 THE HEARING OFFICER: Isn't Glenn Mills a
9 Level Eight?

10 MR. DAKAN: Yes, it is, Judge. I think
11 we were really just trying to figure out what size
12 has to do and distances and so forth.

13 THE WITNESS: That's a Level Eight by
14 distance.

15 THE HEARING OFFICER: No, Level Eight by
16 classification.

17 THE WITNESS: It doesn't have fences
18 around it.

19 BY MR. DAKAN:

20 Q. They do take status offenders in Glenn Mills
21 there, don't they?

22 A. Glenn Mills will take anybody who has got the
23 check.

24 Q. I see, okay.

25 Isn't it true that the manual, both DJJ

1 manual and the Pahokee manual, require that the
2 educational needs of each child be met in accordance
3 with the Florida Department of Education Standards?

4 A. If you make a representation, I'll agree to
5 it, if that what it says.

6 Q. Okay. All right.

7 A. I think the policy is the policy.

8 Q. Okay. But, all right, you would not.

9 I believe I have covered just about
10 everything here.

11 Let me ask you this: Would it be appropriate
12 for the Department to take into consideration, let's
13 see if I can phrase this in a way that I can understand
14 it and to you:

15 Well, let me ask you this first. Are you
16 aware that if a youth escapes from a moderate risk
17 halfway house that that youth runs a risk in the State
18 of Florida of being transferred to adult court?

19 A. I wasn't aware of that. It doesn't surprise
20 me. In most states, you run a risk of a charge.

21 Q. Okay.

22 Would it be appropriate for the Department to
23 take steps to minimize the risk of a youth, who is
24 appropriately to be treated as a moderate risk from
25 being transferred to adult court?

1 A. It hasn't succeeded very well in minimizing.
2 I think we have 7,000 direct files.

3 Q. So, am I correct, though, that you agree that
4 it would be appropriate for the Department of Juvenile
5 Justice to take steps to minimize that happening?

6 A. I should hope so.

7 Q. Okay. Would you agree that it is generally,
8 all things being considered now, that it is best to
9 keep moderate risk youths together and to prohibit or
10 prevent moderate risk youths from being transferred
11 into a high risk or a maximum risk facilities, if at
12 all possible?

13 A. If your classification scheme means anything.

14 Q. Okay. And would you agree then that it would
15 be appropriate for the Department to again take steps
16 to minimize the transfer of youths from a moderate risk
17 level to a high risk, because of escape or for some
18 other reasons?

19 A. Would you repeat that, Counselor? I lost
20 focus, I'm sorry.

21 Q. That's all right. And I'm just about finished
22 and I do appreciate ---

23 A. That's all right. No, it's not your fault,
24 it's my fault.

25 Q. Is it appropriate for the Department to take

1 steps to minimize judicial transfers of youth from
2 moderate risk, who are legitimate moderate risk youths,
3 to high risks and therefore be in with high risks as a
4 results of judicial action?

5 A. Generally, yes.

6 Q. Okay.

7 MR. DAKAN: Your Honor, I have no further
8 questions. Thank you very much, Mr. DeMuro.

9 THE WITNESS: Thank you.

10 MR. ROSENTHAL: Mr. DeMuro, would you need
11 a break before we start?

12 THE WITNESS: No, I'm fine, I'm fine.
13 Recharge.

14 MR. ROSENTHAL: Judge, I will just need to
15 say something of record regarding the IG, the
16 Inspector General reports, I had conversations
17 with Ms. Marvin in the Department over a few weeks
18 and by mutual agreement, we did not go into the
19 subject of IG reports.

20 That was the sole reason that it was not
21 provided to Mr. DeMuro.

22 MS. MARVIN: Judge, I'm going to object
23 to that characterization and what the Department's
24 view was we would not stipulate to the
25 authenticity of those reports.

1 They would have to call a custodian of
2 records to properly introduce those records.

3 And that's where the Department drew the
4 line at the Inspector General reports. We never
5 said that they would be inadmissible in this
6 hearing.

7 MR. DAKAN: They were provided to the
8 Public Defenders.

9 MS. MARVIN: Yes, they were provided.

10 MR. ROSENTHAL: They were provided by
11 the Public Records after the response; not
12 volitionally by the Department.

13 The point I'm making is that the
14 IG reports concern a whole range of physical
15 abuses that by agreement, we did not seek to
16 inquire into the hearing.

17 We sought to limit that. The Department's
18 concern was that the hearing would become a 1983
19 action, and we haven't then by making that the
20 focus of the hearing. That's all.

21 If the Department wants to disagree, they
22 can disagree. I'm stating for the record what
23 occurred.

24 THE HEARING OFFICER: Well, that makes
25 sense to have that stipulation, because of all of

1 the various things that you would hope that could
2 be accomplished with better management on the part
3 of the Department of Juvenile Justice would be --
4 would be to stop those kinds of things from
5 happening.

6 And it would be relevant as to whether those
7 things were happening in the odd community control
8 up to maximum risk.

9 MR. ROSENTHAL: I agree.

10 MR. DAKAN: The only point I want to clarify,
11 though, is that those reports were made available
12 to the Public Defender and they certainly could
13 have provided them to their expert to determine
14 whether or not there were investigations of any of
15 the charges that we have heard.

16 MR. ROSENTHAL: Judge, it's no deficiency
17 on Mr. DeMuro's part. If there's a deficiency
18 on my part, there's a deficiency on my part.

19 I made a decision that that was just
20 going to extend to the scope of this indefinitely.

21 REDIRECT EXAMINATION

22 BY MR. ROSENTHAL:

23 Q. Mr. DeMuro, with regard to the Department's
24 last questions, if you had a facility that in structure
25 and programming was equivalent to a Level Eight or

1 above and you labeled it a Level Six and you controlled
2 behavior in such a way you didn't have to travel kids
3 up to Level Eight because you had the equivalent, could
4 that also be an actual Department policy?

5 A. It ought not to be.

6 Q. Would that be an incorrect use of the
7 facility?

8 A. Absolutely.

9 Q. Does the labeling of the facility determine
10 its nature or characteristics?

11 A. No.

12 Q. Mr. Dakan asked you a number of questions
13 about the Department's rule and responsibilities and
14 how it should do things.

15 Is labeling a facility an appropriate way to
16 deal with the problem?

17 A. No.

18 Q. Mr. Dakan asked you a number of questions
19 about standards and that none of the matters to which
20 testimony the Court has already heard in the prior day,
21 are authorized by policies of programs.

22 If those events are occurring, if the Court
23 finds they occur, that those policies are in place,
24 what does that say about the Department's oversight or
25 the vendors' activities?

1 A. There's an old saying, "As many as slipped
2 between the cup and the lip."

3 There are many problems here between what has
4 written on paper and what actually happens.

5 Q. There can be huge deviations?

6 A. Huge deviations, huge deviations.

7 Q. What about the facility itself, Mr. Dakan
8 referred to the Department's Restrictive Level
9 Guidelines Manual, did you see the description of Level
10 Six and of like facilities and their identification
11 listings of facilities of Level Six and the level
12 characteristics?

13 A. I did. In the Manual?

14 Q. Yes.

15 Is there anything -- anything in the manual
16 in the remotest way that encompasses a facility like
17 Pahokee as a Level Six?

18 A. No.

19 Q. So standards and practices don't mean
20 anything on paper, where you are depending on what's
21 happening out there in the real world; is that correct?

22 A. Practice, practice is what we are talking
23 about.

24 Q. In your experience in both running
25 administrative agencies, which have the direct

1 supervisory responsibilities the Department has here,
2 as well as investigating them and consulting with them,
3 is it an acceptable level of response simply to put
4 policies in place and then say it's up to the vendor?

5 A. No.

6 Q. Is it an appropriate agency response to say
7 we have no control over the vendor other than certain
8 contractual obligations in our own manuals?

9 MR. DAKAN: Your Honor, I am going to
10 object to that unless they are prepared to put
11 forth evidence to back up his case, otherwise it's
12 purely hypothetical and totally speculative.

13 THE HEARING OFFICER: I don't think that
14 he broke that up in his Direct, but I think that's
15 an appropriate question, considering the nature of
16 your Cross-Examination.

17 THE WITNESS: Would you repeat the question,
18 Counselor?

19 THE HEARING OFFICER: Because he's not going
20 to be here if you-all decide that there's going to
21 be a "pass-the-bucket" defense.

22 MR. DAKAN: Oh, Judge, we're not.

23 As a matter of fact, I think that the defense
24 will be that we are doing exactly what he is
25 asking about.

1 THE HEARING OFFICER: Okay.

2 There was something in the opening statement,
3 though, that indicated that. That may have.

4 MR. DAKAN: Oh, well, if there was, then
5 I perhaps may have misled the Court as to the
6 actual stipulation.

7 MR. ROSENTHAL: Well, Judge, I take opening
8 statements very seriously and I'm entitled to rely
9 upon them and respond to them evidentially if the
10 Department outlined them in a lengthy opening.

11 THE HEARING OFFICER: All right. The
12 Department I think is going to stipulate with you
13 now that that anything that is being done by the
14 vendor is the responsibility of the Department.

15 MR. ROSENTHAL: Would they so stipulate on
16 the record?

17 MR. DAKAN: Let me just -- I'm not sure
18 what anything is, Your Honor.

19 THE HEARING OFFICER: Anything is everything
20 actually.

21 MR. DAKAN: "Anything is everything."

22 THE HEARING OFFICER: I wouldn't ask this
23 question if you didn't have parte status.

24 MR. ROSENTHAL: Judge, I just would like
25 the record to reflect that there is some amount of

1 several seconds, perhaps minutes going by, while a
2 response is made to the Court.

3 Because the record ordinarily would not
4 reflect the passages of times.

5 MR. DAKAN: Judge, the only thing that I'm
6 concerned about and I think the Court has made it
7 clear and again I apologize for not feeling all
8 that well, maybe I'm a little foggy, but I -- I
9 must say that we're not talking about a 1983
10 responsibility.

11 For example, CSC may be responsible for 1983,
12 but we may not. But within that framework, we
13 would certainly agree that we are responsible for
14 complying with the minimum standards of care and
15 development and complying with the statutory
16 requirements.

17 And within that framework, we would certainly
18 agree with that, that whatever our facilities are
19 to do, we are still responsible for the
20 individuals.

21 MR. ROSENTHAL: I'm not sure that's an
22 answer now, Judge, but I want to proceed with the
23 examination.

24 BY MR. ROSENTHAL:

25 Q. Mr. DeMuro, if you ran the Agency, Mr.

1 Dakan's questions frequently presumed hypothetically,
2 what would you do?

3 If you ran the Agency, would you leave in
4 place for the vendor to develop and implement the
5 facility operating manuals?

6 A. That would be a joint thing to define the
7 contract between the program development office of the
8 State and the vendor. You do it together.

9 Q. Would you structure so the vendor has primary
10 responsibility for the manual and primary
11 responsibility for compliance of its own employees with
12 the manual?

13 A. No.

14 Q. Why not?

15 A. Because there's an in-built profit motive
16 here that I'm skeptical of, one.

17 Two. It is as I think Mr. Dakan articulated
18 a second ago, these are the Department's kids.

19 I have a real-world experience with this. I
20 developed the first contract with a for-profit
21 organization to run a secure unit in Northeastern
22 Pennsylvania, run by the RCA Corporation.

23 They worked up policy and procedures. We had
24 to approve them as part of the contract before we did
25 it.

1 We had staff in that facility daily, daily.
2 It was fifteen miles outside of Allentown, it served
3 the Allentown Court, it was a 20-bed locked program for
4 arguably 8-10 kids, Level Eight, Level Ten kids. Kids
5 with violent backgrounds. So, there's ---

6 THE HEARING OFFICER: Is there a Departmental
7 presence at that Pahokee daily?

8 THE WITNESS: There is a Departmental
9 presence.

10 BY MR. ROSENTHAL:

11 Q. In what form?

12 A. I attempted to interview that staff. She was
13 -- she was on another assignment that day and I asked
14 to get her reports.

15 I -- I don't remember her name, but I have it
16 in my notes.

17 MR. ROSENTHAL: For the record, Judge, we
18 would jointly stipulate the person's name is Erna
19 Fouschee.

20 MR. DAKAN: Yes, Judge, and we would just
21 like to add, she was not at the facility that day.
22 She was actually at the Department with me.

23 BY MR. ROSENTHAL:

24 Q. With regard to Mr. Dakan's question about is
25 it appropriate within Level Six to move a child to a

1 higher level of security.

2 You acknowledged that it would be.

3 A. Within six.

4 Q. Within six?

5 A. Certainly, you may want to move a kid from
6 one Level Six probably into another Level Six.

7 Q. Is there anything in your answer to Mr. Dakan
8 that would imply that this is an appropriate level of
9 step-up facility within Level Six?

10 A. And is any scene of this is Pahokee?

11 Q. Yes.

12 A. No.

13 Q. And what about -- what about if a majority of
14 the children in Pahokee were actually first commitments
15 to the State?

16 A. That even -- that even underlines and
17 underscores my problems with the facility.

18 Q. With regard to cost, is it possible that the
19 nature of this kind of facility would have to
20 inherently extend the length of the Level Six
21 commitment?

22 A. As currently configured, yes.

23 Q. And that itself undoes any cost
24 rationalization, does it not for the facility?

25 A. Cost is a matter of what is the unit per year

1 and what is the utilization per year.

2 So that in elongating length of stay drives
3 down your cost argument.

4 Q. And you run down the value of the economy of
5 scales, is that correct?

6 A. That's right. That's right.

7 Q. If you had to evaluate whether this facility
8 elevates security over individual treatment needs or
9 individual treatment needs over security, what would
10 your response be?

11 A. No doubt in my mind, this is a facility not
12 to security, but I would say control is elevated.

13 All programs should be secure, even this
14 courtroom, right?

15 Q. Your answer is that this facility elevates
16 security over ---

17 A. Control and security over it. Control the
18 behavior.

19 Q. To a degree appropriate to a moderate risk?

20 A. No.

21 Q. Mr. Dakan asked you about the Department's
22 responsibilities within the risk levels, within the
23 risk levels.

24 Is this appropriate Departmental response to
25 a Level Six commitment?

1 A. No.

2 Q. Does the Department have alternatives that
3 are available and workable to it?

4 MR. DAKAN: Judge, this, I think we
5 argued within the Court's purview is what is the
6 definition of "moderate risk."

7 I would object to this question.

8 THE HEARING OFFICER: I don't think so.
9 Overruled.

10 THE WITNESS: I assume it does. I would
11 like to spend some time educating myself. It
12 certainly on paper has a range of Level Six
13 options.

14 BY MR. ROSENTHAL:

15 Q. If the Court would find it illuminating for
16 you to inquire further over a better time span, would
17 you be able to do that?

18 A. Certainly.

19 Q. So, the only brevity of your degree of
20 inspection had to do with the fairly time limitations
21 that were imposed on you by the short compression
22 before the hearing; is that correct?

23 A. That's correct.

24 Q. And perhaps the restriction on seeing other
25 children within the facility; is that correct?

1 A. Yes.

2 Q. When Mr. Dakan asked you, indicating you had
3 a somewhat limited time to see the Dade kids, you did
4 see one kid other than Dade?

5 A. Yes.

6 Q. Did you spend any time with that child?

7 A. I spent roughly twenty minutes with that
8 child.

9 Q. Could you relate what that was about?

10 MR. DAKAN: Judge, I'm going to object
11 as this being outside the scope of Cross.

12 THE HEARING OFFICER: Overruled.

13 I'll let you Recross on the subject.

14 MR. DAKAN: Judge, the other problem
15 I have is that, number one, I don't know that this
16 youth is available for cross-examination.
17 We had ---

18 THE HEARING OFFICER: If it's something
19 that an expert relies on, it is admissible.

20 THE WITNESS: Because of a misunderstanding
21 that we all had in the youngster's language, it is
22 the second youth that was in confinement, the
23 first youth was a Dade County youth. The second
24 youth we approached and said, "Are you a Dade
25 County youth?"

1 The youngster misunderstood us, he said,
2 "Yes."

3 We went in to interview him, because
4 we thought he was a Dade County youth. Halfway
5 through that interview, he was a Bay County youth.

6 MR. ROSENTHAL: Bay as in B-a-y?

7 THE WITNESS: B-a-y County youth.

8 The interview, I believe is important, to
9 me it's important because it verified precisely
10 the same set of facts that I laid out in Direct
11 this morning.

12 The banging kids against the wall, the take-
13 downs, throwing water on kids, the restraint to
14 beds, so that -- and this was, and also this
15 youngster as well as some of the Dade youngsters
16 came up with the very same name of having seen the
17 kid handcuffed to a bed.

18 So there was less of a doubt in my mind
19 that there was any, you know, great plot by the
20 Dade County kids to overthrow DJJ.

21 BY MR. ROSENTHAL:

22 Q. Is this facility correctable as a moderate
23 risk commitment facility?

24 A. I do not believe so.

25 Q. If you sought to make it correctable, what

1 would you do, how could you do it?

2 A. This is kind of like, you know, do you throw
3 your wife or your daughter out of the row boat
4 question.

5 Do you want me to proceed?

6 Q. Yes, please.

7 THE HEARING OFFICER: Maybe, say, to
8 make it a little easier, because I think Mr. Dakan
9 covered a number of things that he said could be
10 correctable.

11 MR. ROSENTHAL: Right.

12 THE HEARING OFFICER: Let me ask you: What
13 could not be corrected?

14 THE WITNESS: Level Six youngsters.

15 This might be a youthful offender program,
16 this might be a program in adult corrections, a
17 hundred and twenty, 150 kids, 16 to 19, that kind
18 of age group, year --- .

19 THE HEARING OFFICER: No, assuming that you
20 eliminated the abuses, the throwing of the water,
21 the inappropriate uses of confinement and those
22 kinds of things, assuming that you did that --

23 THE WITNESS: Yes.

24 THE HEARING OFFICER: --what is left that
25 is not correctable?

1 THE WITNESS: It has 350 youngsters in it.
2 It is going to have a problem continually with
3 staff turnover, given its location.

4 It has a problem with connecting kids
5 to families.

6 For these and other reasons, I don't believe
7 it's appropriate for a Level Six program.

8 Even a -- let's for a hypothetical say there
9 are degrees of Level Six, A through G, with G
10 being the highest, it is not appropriate for a G
11 Level Six program.

12 That's what you have a boot camp for; that is
13 what we have DIP for; you have other remedies to
14 that issue; or you can create more remedies to
15 that issue.

16 You can create semi-secured halfway houses.
17 You could do lots of things.

18 THE HEARING OFFICER: Is that aggravated by
19 the fact that you have 13-year-olds?

20 THE WITNESS: Absolutely. As first
21 commitments.

22 THE HEARING OFFICER: Is that first
23 commitments. So these various things, the need
24 not to have a prison-like system, not to have such
25 a large institution, to have a certain security

1 that the child has and the kind of staff that is
2 there, the close -- the location to a family and
3 so forth is even more important for a 13-year-old
4 than it is, say, to somebody who is older?

5 THE WITNESS: The younger, certainly; but
6 then for the older kids, those who go home, you
7 have to work on that, but you also have to work on
8 re-entry which is difficult in a setting.

9 THE HEARING OFFICER: Why is re-entry is
10 difficult.

11 THE WITNESS: To define re-entry is
12 connection with family, peers, school, and
13 job. I would make those four spheres; maybe
14 leisure time activity.

15 The quality and quantity of healthy
16 interactions with those things are difficult to
17 achieve even for a 16- or 17-year-old in remote
18 settings not visited.

19 I agree with Your Honor, I think, in
20 continuing with Your Honor's question, it is more
21 problematic for a 13- or 14-year-old, but it is
22 still problematic for a 16- or 17-year-old, who
23 needs to go back and get positive peers, aligned
24 in some school or job, a place to live, you can't
25 live at home, you know.

1 And really, a place to have fun
2 appropriately. One of the things these kids
3 don't know how to do is have a good time
4 appropriately. Enjoy themselves.

5 We recognize the developmental needs of
6 kids in funny ways: You don't get married until
7 you're 17; you can't drive, you know.

8 Kids have different developmental needs.
9 One of them is to learn how to have fun
10 appropriately. And this cannot be taught.

11 And "by fun," I don't mean joshing
12 all the time. Coming to age appropriately.
13 Extremely difficult to do in this remote facility
14 and I think totally inappropriate at a Level Six,
15 where we are not at the high-risk level, we are at
16 the moderate-risk level.

17 THE HEARING OFFICER: Are you saying
18 something like level -- the child, who has
19 been so incorrigible that the Court has deemed it
20 necessary to place the child on the maximum risk,
21 even the high risk, perhaps public safety, because
22 of the violent nature of things and so forth, say,
23 you know, "We'll forget about these things and
24 we'll just ---"

25 THE WITNESS: Oh, I had an interesting

1 conversation with a friend of mine two days ago
2 about this very matter.

3 No, I'm not saying, "Forget about these
4 things." I don't believe Dozier and Eckerd forget
5 about these things for Level Eight kids at all.

6 I believe they got factored in, but they get
7 factored in, in a more secure environment because
8 of the high risk.

9 And I believe and this is not law, it's
10 common sense, if a kid commits a violent crime,
11 he's going to do more time, he'll do more time
12 proportionately in a more secure setting.

13 These very same needs would have to be
14 addressed developmentally for the 17-year-old
15 drive-by shooter who is at, you know, EYDC, who
16 gets transferred in or gets waived in.

17 We are talking here about a population
18 which is a bit younger, 13 to 16, and by
19 definition less risky.

20 THE HEARING OFFICER: The same need needs
21 to be addressed by my colleagues in the Criminal
22 Division for the 7,000 cases that are a direct
23 file?

24 THE WITNESS: Absolutely.

25 And this may be, this may be an underline,

1 an appropriate function for a facility that they
2 had thrust upon us: Pahokee or Polk, which
3 was built as a youthful offender prison.

4 THE HEARING OFFICER: Now, you're saying
5 that the re-entry would be difficult.

6 One idea that I had expressed when things
7 were a little bit calmer around here --

8 THE WITNESS: What's that?

9 THE HEARING OFFICER: --was that, was
10 that the use of the Pahokee facility could be used
11 for a short-term entry period before more
12 appropriate -- more appropriate kind of Level Six,
13 moderate risk thing happened.

14 Say, you know, just to try to establish
15 a certain amount -- a certain amount of order for
16 a short period, two, three weeks, and maybe all
17 the children should be sent there for a period of
18 time now.

19 THE WITNESS: I understand the concept.

20 THE HEARING OFFICER: I mean I'm not
21 trained like you are, so I was just ---

22 THE WITNESS: Let's assume the concept
23 makes some sense. You're talking about an
24 assessment center and a kind of ---

25 THE HEARING OFFICER: Yeah, there is

1 in the statute, the legislature has appropriated
2 money for an assessment center, but we don't have
3 the assessment center yet.

4 THE WITNESS: It's much too large for that.
5 It's much too large for that, because part of that
6 assessment, is you want to get individual
7 knowledge of the kid and you cannot do that in
8 a 350-bed facility.

9 It might, you know, conceivably and then
10 you have the remoteness where it is.

11 I would want an assessment center for
12 Southeast Florida to be closer to one of the
13 cities, so we can get our better minds at the
14 universities and at the social work schools
15 involved.

16 This is a -- unless you are posturing,
17 Judge, that we have a system where we are
18 filtering -- an assessment center runs, say, two
19 to four weeks, we're running twelve times 350 kids
20 into Level Six, is that what the numbers look
21 like?

22 I'd have to look at them, you.

23 THE HEARING OFFICER: I would, as well.

24 THE WITNESS: So, what's 12 times ---

25 THE HEARING OFFICER: I'm not running

1 the Department.

2 THE WITNESS: Either am I.

3 Twelve times 350 would be, you know,
4 would be 4,000 kids? 4,000 kids. 4,200 kids,
5 Level Six, in the Southeast region in a year?

6 I don't know. George would know. I
7 don't know.

8 THE HEARING OFFICER: All right. Go
9 ahead.

10 BY MR. ROSENTHAL:

11 Q. Mr. DeMuro, is this facility doing harm to
12 these children?

13 A. Yes.

14 Q. Is it doing harm to society because of the
15 children's turning out of the facility?

16 A. Yes.

17 Q. If you were running the Department as Mr.
18 Dakan had asked you, is there any way that you can
19 justify this facility as a moderate risk facility?

20 A. No.

21 Q. Is it correctable in the real world by its
22 structure and operational approach?

23 A. No.

24 Q. If the Department had a statutory mechanism
25 for taking kids out of Level Six, at the high end of

1 Level Six, to the extent that we are talking about
2 gradations now, if the Department had its own statutory
3 mechanism for taking a kid out and transferring out and
4 then obtaining the approval of the Court or allowing
5 the Court to veto, the statute allowed the Court to
6 veto it, does meet all the considerable considerations
7 you need to have for Level Six youth?

8 MR. DAKAN: May I ask him to repeat the
9 question, I need to be clear on these things.

10 MR. ROSENTHAL: Surely.

11 BY MR. ROSENTHAL:

12 Q. If there was a statutory mechanism for at the
13 high end of Level Six, for kids who commit, you know,
14 who pose serious risks by virtue of their behavior in
15 the institution, to take them up to Level Eight
16 administratively, subject to the Court's veto power, is
17 that a sufficient administrative response for that type
18 of behavior problems?

19 A. It could be. And I know they have that
20 ability from four to six, because I interviewed a kid
21 who was transferred from two to six, transferred from
22 the Marine Institute program. So I don't know if that
23 is also true for six to eight.

24 Q. They have it for all levels, except the ten,
25 there is nothing above, but they have at any level, to

1 go up or down for that matter, is that a sufficient
2 administrative tool?

3 A. It could be, sure.

4 Q. It could obviate the justification for a
5 facility like Pahoee.

6 A. I would and this is a due process concern, I
7 would want to make sure that when you go up the ladder,
8 that it's more than an administrative review.

9 Now, I know that the statute doesn't call for
10 that, but I believe that if a youngster's placement is
11 made more restrictive, more secure, deprivation of
12 liberty, that there is a clear and compelling interest
13 for due process at that point, and not just an
14 administrative transfer.

15 Q. But subject to the Court's veto?

16 A. Yeah, but I would make -- you're asking me, I
17 wouldn't want it as a veto.

18 Q. No.

19 A. I wouldn't want it. We transferred him, but
20 we are having a hearing on the permits of this
21 transfer.

22 Q. That is not the question.

23 The question is: Is that a sufficient
24 administrative tool to deal --

25 A. Yes.

1 Q. --with the problem of the high-end Level Six
2 kid?

3 A. It could be, yes.

4 Q. So, Pahokee institutional response to it is
5 relatively a small percent, theoretical percent of
6 Level Six kids, does the idea of a Pahokee defy the
7 idea of a judicial moderate risk commitment?

8 A. Yes.

9 MR. ROSENTHAL: No further questions.

10 MR. DAKAN: Let's go back over a couple
11 of things I'd like to clarify.

12 RECROSS EXAMINATION

13 BY MR. DAKAN:

14 Q. Are you aware that the re-entry of youth is
15 handled at the community level?

16 A. Am I aware that the re-entry workers work in
17 the community?

18 Q. Yes, sir.

19 A. Yes, I am aware of it.

20 Q. Okay. Are you aware that on occasions, first
21 of all, that the ability of the Department to take a
22 moderate risk youth and put him into the re-entry is
23 subject to Court review?

24 A. That doesn't surprise me.

25 Q. Okay. Are you aware that there are many

1 occasions where the Department has requested the Courts
2 throughout the State, to allow the Department to
3 transfer the youths to re-entry at the community level
4 and that has been refused?

5 A. I, if you make the presentation, I would
6 agree, I mean just what you are telling me and you are
7 being truthful, I don't know what the numbers are for
8 this region, I don't know what the length of stay is in
9 the six programs you're talking about, whether you are
10 differentiating from one program to another, I don't
11 know that.

12 Q. Okay. Now, you made reference to a few
13 minutes ago to the ideal that we should site programs
14 at as much as we can in the community and am I correct
15 that that was what you would ---

16 A. Yeah, you can put -- not in my back yard, you
17 can't put them always in the community.

18 Q. That is a problem, isn't it?

19 A. Florida seems to get around it very well. I
20 driving in, saw a correctional facility here in the
21 County, it's near the Airport.

22 Q. Where was that?

23 A. The cab driver drove me past it.

24 Q. Okay. This was out near the Airport here?

25 A. Uh-huh.

1 Q. Do you know whether or not or are you aware
2 that under the Florida Juvenile statute that the local
3 communities, the counties and municipalities have a say
4 in whether or not the Department can site facilities
5 within those communities?

6 A. I'm aware of that.

7 Q. So, a lot of times, it isn't -- there are
8 other factors outside of what the Department's
9 capabilities are for siting facilities; would that be a
10 fair statement?

11 In other words, we can't totally control
12 this, you understand that?

13 A. Yes, you can't totally control it.

14 MR. DAKAN: All right. Thank you.

15 No further questions, Your Honor.

16 THE WITNESS: Thank you.

17 MR. DAKAN: Thank you very much, Mr. DeMuro.

18 THE WITNESS: Good luck, Your Honor.

19 THE HEARING OFFICER: Thanks.

20 All right. We'll take just five minutes.

21 I'd like to get another witness on today.

22 Just stretch for five minutes.

23 (Thereupon, a recess was taken at 10:53

24 a.m.)

25 (11:04 a.m.)

1 THE HEARING OFFICER: All right. On the
2 record.

3 MR. DAKAN: Judge, as I have indicated to
4 the Court, I am not feeling well. My stomach
5 is -- I'm feeling somewhat nauseous, my stomach is
6 tossing every which way.

7 We have talked with the Public Defender, as
8 I think Your Honor is aware, Ms. Marvin and myself
9 have divided up the witnesses and fortunately, the
10 only witnesses that they can really call at this
11 point, quote unquote, my witnesses, and I really
12 don't feel that I can competently concentrate and
13 Cross-Examine.

14 THE HEARING OFFICER: Would you like to
15 defer till Monday.

16 MR. DAKAN: I would very much appreciate
17 that, Judge.

18 I can represent to the Court that I
19 believe that with all of the witnesses, we will
20 still be able to get done Monday and Tuesday and
21 more certainly we are prepared to do or stay long
22 as long as we need.

23 So, I would ask the Court to accommodate
24 that at this time.

25 MR. ROSENTHAL: We will defer to the Court --

1 THE HEARING OFFICER: Now, we need to discuss
2 about the ---

3 MR. ROSENTHAL: Your Honor, in order to bring
4 down three additional children, other than the
5 four that are the subject of this motion before
6 Your Honor for these hearings.

7 These hearings are not concluded. One of
8 -- excuse me -- two, I believe -- two of those
9 three children testified. One remains.

10 The two that had testified, need to be
11 present. Number one, they may be called in
12 rebuttal, as far as being part of the rebuttal
13 case.

14 Number two, they are in material danger,
15 I would submit to the Court, if they are required
16 to return to the Pahokee facility.

17 And I want to make this very clear, Judge,
18 we specifically and very carefully on Direct
19 Examination did not require the children to name
20 names.

21 It was solely during Cross-Examination that
22 specific names of brutality by specific
23 individuals was brought up in this Court and these
24 children are subject to brutality, they are
25 subject being accused of bucking, they are subject

1 to being reduced in level, these kids have been
2 subject to abuse, Judge, and I think it would be
3 manifestly unjust at this stage for Your Honor to
4 order these children to be sent back to the
5 Pahokee facility without even a conclusion of the
6 hearings before Your Honor.

7 And for those reasons, I'm asking they
8 simply stay here.

9 THE HEARING OFFICER: They can stay here.

10 MR. ROSENTHAL: Thank you, Your Honor.

11 MR. DAKAN: We don't have any problem with
12 that, Judge. The one thing that I would ask,
13 though, and I don't know the truth of this, okay?
14 And I don't want to get into that, but what we
15 are hearing --

16 THE HEARING OFFICER: So, far you have
17 only told the truth. So why are you telling me
18 something is not the truth? •

19 MR. DAKAN: Because I haven't investigated
20 it.

21 MS. MARVIN: From your personal knowledge.

22 MR. DAKAN: My personal knowledge, let's
23 put it that way, but my understanding, Judge, is
24 that these youths may be causing a lot of
25 disruption in the Detention facility down here

1 bragging about how they are doing and so forth,
2 and as I say, I don't the truth of that or not,
3 but I would just ask that this Court instruct
4 these youths ---

5 THE HEARING OFFICER: I heard that there
6 were some -- I mean I heard from my Bailiff that
7 there was some problem this morning --

8 MR. DAKAN: Okay.

9 THE HEARING OFFICER: --in bringing the
10 children in.

11 MS. OSBORNE: Right. It's true. You know
12 what happens is that there are Unit 1, they can't
13 be placed in the other units because, quote
14 unquote, being processed and not held.

15 As a result, since Monday night, they're
16 on Unit 1 locked down now going on five days.

17 I spoke to the DDJ worker, they get one
18 hour of recreation a day, so naturally they are
19 totally agitated and for the three witnesses, they
20 have to sit on the orange plastic chairs, you
21 know, from nine to five.

22 So, yes, they haven't been perfect. I'm
23 giving the Court some indication as to why they
24 are, you know, all axed up because it has been a
25 long week for them and they are locked down

1 constantly.

2 I mean, I had to get them showers yesterday.
3 You know, they have really been restricted and I
4 understand the Youth Hall concerns, they don't
5 want to introduce them to a population at large if
6 they are only here temporarily.

7 But please understand what's that like to
8 the kids.

9 THE HEARING OFFICER: All the children that
10 are here, are here only temporarily.

11 MS. OSBORNE: No, but I mean they are not
12 even here for the 21 days to attend school to do
13 this or for whatever reason, they are being
14 treated only in Unit 1, which is the unit where
15 you have to stay in your cell the whole time,
16 except for one hour a day.

17 So, that's why they have been freaking out
18 about that for a couple days. That is why their
19 energy level is high and their behavior ---

20 THE HEARING OFFICER: I think they should
21 be allowed to go to school.

22 MS. OSBORNE: Pardon me?

23 THE HEARING OFFICER: I think they should
24 be allowed to attend the classes.

25 Why couldn't they attend the classes?

1 MR. DAKAN: Judge, this is the first time ---

2 THE HEARING OFFICER; I mean just because
3 they are here, doesn't mean they should not attend
4 classes.

5 MS. OSBORNE: Judge, they weren't even
6 allowed visitation, but I did speak to Mr. Ingram
7 last night because parents showed up Wednesday
8 night and they weren't, they are being treated
9 slightly differently.

10 And I'm not saying that in the negative
11 sense, but just being segregated from how the
12 rules apply to everybody else.

13 And as a result, they are going nuts a
14 little bit. So I did get ---

15 THE HEARING OFFICER: It was my intention
16 when they would be in the Detention Center, would
17 not be that they would be made second-class people
18 in the Detention Center. .

19 The agreement was that there was fear that
20 these are children, these are dangerous children
21 and that if you released the children to the
22 community, might cause, you know, might cause
23 danger to the community because they have not
24 finished -- they had not finished their commitment
25 program.

1 But that didn't mean that they were supposed
2 to be second-class detainees in the Detention
3 Center.

4 MR. DAKAN: Well, I don't think that is
5 happening and what I would ask that we obviously
6 have the time now, Ms. Marvin has just gone to get
7 the Detention Center's supervisor, I'm not
8 qualified to respond because I don't know, A, how
9 it runs or, B ---

10 THE HEARING OFFICER: Then I'll talk to that
11 person.

12 MR. DAKAN: Okay, great, thanks, Judge.

13 MR. ROSENTHAL: Judge, if Mr. Dakan is in
14 agreement, if he is able at this point, these are
15 the subject matter, Judge Peterson's photographs -
16 - I would offer -- we have dispensed
17 with custodian.

18 MR. DAKAN: May I look at them?

19 MR. ROSENTHAL: Oh, absolutely.

20 This was the packet that was in that ---

21 Judge, while Mr. Dakan is reviewing the
22 photographs, with which I have no trouble, these
23 are Judge Peterson's photographs.

24 I would submit them because in some ways
25 he is a better photographer than our own, than our

1 own, so I would just offer them in.

2 They are not really redundant, they are
3 mostly different views in the facility that were
4 taken every, I believe in early to mid-July and,
5 you know, subject to the Department's relevancy
6 objection and they are not objecting on custodial
7 or photo-taker grounds, I would offer them as
8 Juvenile's Exhibit 13, I believe the number is 13.

9 MR. DAKAN: Is this at the Library?

10 MR. ROSENTHAL: I believe that's what that
11 is.

12 THE HEARING OFFICER: See, the Library now
13 seems to be much better.

14 MR. ROSENTHAL: Yeah, yeah.

15 THE HEARING OFFICER: See, I would remiss and
16 I can't that I have never seen those photographs
17 because I think everybody in this building have
18 seen those photographs.

19 But, you know, the Third District Court of
20 Appeal has not seen the photographs.

21 MR. ROSENTHAL: Yeah, actually they have to.

22 THE HEARING OFFICER: Because I've seen the
23 photographs, maybe the Third District Court of
24 Appeal, I mean would see the photographs, I know
25 that the Library is no different.

1 I've now seen the actual child with the
2 scratches, it is probably the same child.

3 MS. OSBORNE: It's not.

4 MR. DAKAN: Yeah, that's the only thing,
5 Judge --

6 MS. OSBORNE: Not even the same color, it's
7 chocolate.

8 THE HEARING OFFICER: I don't remember.

9 MR. DAKAN: --you know, the problem I have,
10 I have no problem the first page, --- that's up
11 to the Court.

12 The second page, we are dealing with specific
13 individuals again. We don't know the
14 circumstances under which these youths have the
15 situations that they have that are shown here.

16 I'm assuming that some of these are in
17 because of the short year, you already have that.

18 The Library, as Your Honor points out, has
19 already been ---

20 THE HEARING OFFICER: It would be somewhat
21 relevant, but maybe you need further
22 authentication, 'if you don't want to stipulate
23 to it.

24 MR. ROSENTHAL: They're green, Judge.

25 THE HEARING OFFICER: Are they green?

1 MR. ROSENTHAL: You said authentication.
2 Not otherwise, they are green to authentication.

3 MR. DAKAN: Oh, they are green to the
4 authentication.

5 I just don't think they're relevant, Judge,
6 and to the extent that maybe ---

7 THE HEARING OFFICER: Were they given
8 scratches, I mean, to show that there are not
9 just one kid with scratches, but two.

10 MR. DAKAN: But we don't know how those
11 scratches came about; we don't know whether that
12 was a result of a fight; we don't know whether
13 that youth got additional treatment immediately.

14 That's the problem I have with that, Judge.
15 All we have is a youth with scratches. That is
16 not relevant, because as I understand relevance,
17 it either ---

18 THE HEARING OFFICER: I think you're right,
19 I think you're right. You would have to show,
20 you know, what the scratches were about.

21 MR. DAKAN: Yeah, right.

22 MR. ROSENTHAL: Well, Judge, what I'm
23 proffering that they have to be marked as part of
24 the record anyhow as a proffer and it is a Bench
25 proceeding, so there is really no substantive

1 difference.

2 As a proffer, the Court must receive it as
3 a proffer, if it is not accepting it as evidence.

4 MR. DAKAN: But the Court can rule whether
5 or not they would consider it.

6 And I would just ask that the Court not
7 consider them for the reasons -- oh, the lunch
8 thing, I mean that's an isolated tray.

9 Again, that's several months old. It's
10 really again neither proves or disproves all of
11 the pose really is that there is a bug on one tray
12 at one time.

13 THE HEARING OFFICER: That's what the kid
14 said, he said that there was a bug on his tray,
15 but he said at various times, but --

16 MR. ROSENTHAL: Judge, I think it goes
17 to the weight --

18 THE HEARING OFFICER: --in addition to ---

19 MR. ROSENTHAL; --it goes to the weight,
20 not as to admissibility.

21 I would ask the Court to admit the
22 photographs.

23 THE HEARING OFFICER: I'm not going to admit
24 the one with the scratches.

25 MR. ROSENTHAL: Okay. So that would be

1 a proffer.

2 Will the Court admit any of those?

3 THE HEARING OFFICER: And I won't -- and
4 why the bug is on the food, I mean we don't
5 know whether the child placed the bug on the food,
6 it's possible.

7 MR. ROSENTHAL: What I'm saying, Judge, I
8 will need clarification.

9 Are none of them admitted, then?

10 THE HEARING OFFICER: No, the rest of them
11 are.

12 MR. ROSENTHAL: The rest of them are
13 admitted save for the one with the child with
14 scratches on his arm --

15 THE HEARING OFFICER: Yeah, and the bug
16 on the food.

17 MR. ROSENTHAL: --and the bug on the
18 food, but those will be admitted as proffer,
19 as Juvenile's proffered exhibit then.

20 THE HEARING OFFICER: Children could not
21 have produced the scanty food that was shown.

22 MR. ROSENTHAL: I'm sorry, for the
23 Clerk's benefit, I want to clarify.

24 Then two of those -- yeah, those are
25 marked as proffered Juvenile's exhibit.

1 The Court did not admit those. The
2 Court admitted the other photographs.

3 THE HEARING OFFICER: Let's give them
4 an I.D. number.

5 MR. ROSENTHAL: Yeah, those get an
6 I.D. number. The others get a Juvenile
7 Exhibit 13, I think.

8 (Thereupon, Defendant's Exhibit No.
9 13 was received into evidence.)

10 (Thereupon, the two photos were marked
11 for Identification as B-1.)

12 MR. DAKAN: Now, Judge, while we are talking
13 about photographs --

14 THE HEARING OFFICER: This is going to make
15 a noise in a moment, so just don't get disturbed,
16 all right?

17 MR. DAKAN: All right.

18 MR. ROSENTHAL: What is that; what kind of
19 notebook is that, Judge?

20 THE HEARING OFFICER: Oh, that's the program.
21 Not the notebook.

22 MR. ROSENTHAL: What is it that does that?

23 THE HEARING OFFICER: It's part of Windows
24 95.

25 MR. ROSENTHAL: I'm still on Windows.

1 THE CLERK: I'm sorry, what I.D.?

2 THE HEARING OFFICER: You can call it
3 B-1, because it's the second day.

4 MR. DAKAN: --now speaking of photographs,
5 Your Honor, on -- it's been a long week, whenever
6 we got in here, Wednesday, we provided sometime
7 Wednesday afternoon the Public Defender with
8 photographs that we intend to ask to be admitted
9 on our case.

10 We have provided them with one set. We
11 have provided them with negatives as well, I
12 believe and they have had those in their
13 possession since that time.

14 I certainly would not have any objection
15 to them having those photographs in their
16 possession over the weekend to make additional
17 copies or whatever.

18 I understand that the Public Defenders
19 have some kind of objection and I suppose we need
20 to take care of that at this point.

21 But we will be intending on producing it and
22 asking the Court to admit those photographs.

23 MR. ROSENTHAL: I'm sorry, I was not party
24 to that discussion directly between Mr. Dakan
25 and my colleagues.

1 Which -- are these of different facilities
2 or these are all Pahokee?

3 MR. DAKAN: They are all Pahokee and
4 there are also ones of the Tallahassee Boot Camp,
5 Leon County Boot Camp.

6 MR. ROSENTHAL: We would certainly object
7 to the Tallahassee, Leon County Boot Camp, because
8 that is not part of these proceeding.

9 But if you can give me a moment, I'll just
10 go through the Pahokee ones.

11 THE HEARING OFFICER: Is the Leon County Boot
12 Camp a Level Six?

13 MR. DAKAN: Yes, Your Honor, it is, as a
14 matter of fact.

15 And we will have testimony concerning that.
16 I'm not asking -- as I understood the objection
17 was that Mr. Rosenthal objected because we had not
18 provided them with an extra set.

19 And believe me, Judge, if I had the personal
20 money to do it, I would have done so; but I
21 simply, you know, did not have the money to
22 provide him with an extra set.

23 They had them all weekend, look at them, make
24 whatever copies they want; but that was my
25 understanding of what they objection was, is that

1 they didn't want us to use them because they
2 didn't get an extra set.

3 MR. ROSENTHAL: My question about Pahokee,
4 Judge, would be and maybe we can narrow this.

5 You know, my initial objections was we
6 didn't have our own set and I didn't want to go
7 through the process of seeing whether they would
8 be objected to or not, because they were not our
9 copy to work with.

10 We're -- and I didn't want to damage the
11 Department's set -- were you planning on
12 presenting testimony or just simply admitting
13 these?

14 MR. DAKAN: We were admitting these.

15 MR. ROSENTHAL: Then I would object,
16 Judge, because we had some of our children
17 testify already and we could have perhaps, you
18 know, to the extent that the Department is trying
19 to put a happy face on the facility, we might have
20 been able to, you know, we lost the opportunity to
21 present ---

22 THE HEARING OFFICER: The children are still
23 here.

24 MR. ROSENTHAL: All right. That may project
25 the hearing, then I have no problems.

1 THE HEARING OFFICER: The children are still
2 here. If you need to ask the children about
3 the photographs, you can call them in your
4 rebuttal case.

5 MR. ROSENTHAL: Okay. Thanks.

6 MR. DAKAN: Do they still want them over
7 the weekend? I would be happy to let them
8 have them.

9 MR. ROSENTHAL: Well, I would like the
10 Department make us a set.

11 MR. DAKAN: Judge, I don't have the money
12 to do it.

13 THE HEARING OFFICER: There is no obligation
14 for the Department to make you a set.

15 If they want to give you those photographs,
16 they can give you those photographs.

17 There's nothing in the rules that say,
18 even in discovery, that they have to provide you
19 with a set.

20 You have the right to inspect their
21 photographs and they are saying, "Not only
22 inspect them, but borrow them".

23 MR. ROSENTHAL: The Court is absolutely
24 correct. The Court also on October 1
25 indicated that the parties should cooperate with

1 each other with regard to discovery.

2 We provided them our photographs a week
3 and a half ago.

4 THE HEARING OFFICER: If you provide them
5 with the funds, maybe they'll go down to the ---

6 MR. ROSENTHAL: We don't have the
7 reimbursement for our copies, Judge. That's fine.
8 That's fine.

9 We will take the offer to borrow them for
10 the weekend.

11 MR. DAKAN: Sure. I think they are all
12 in there.

13 MR. ROSENTHAL: I'm not sure. Was there
14 a ruling? We are objecting to the non-public
15 facility.

16 We did not have access, we did not know
17 that might come up, and that, we would object to.

18 MR. DAKAN: I would just, the only reason
19 I brought that up, Judge, is because Mr.
20 Rosenthal was indicating that he would object
21 because they didn't have an extra copy.

22 I would prefer that we argue the
23 relevancy and stuff at the time.

24 THE HEARING OFFICER: Now, I heard
25 some interesting Cross-Examination, you know, of

1 the witness earlier today, that went into areas
2 that I don't really have any jurisdiction over.

3 Namely, you know, what could be in the
4 future. If that's an opening that you-all want to
5 start talking about some kind of settlement, which
6 goes beyond what my powers are, I would encourage
7 you-all to discuss these matters over the weekend.

8 MR. DAKAN: All right. Thank you, Judge.
9 we will.

10 MR. ROSENTHAL: We requested that of the
11 Department in the past, Judge, and we're here.

12 THE CLERK: Off the record, Your Honor.

13 (Thereupon, the hearing was adjourned at
14 11:20 a.m. until Tuesday, November 19, 1997.)

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CERTIFICATE OF REPORTER

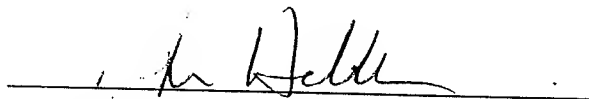
STATE OF FLORIDA)

COUNTY OF DADE)

I, JOHN E. HALTER, Reporter, hereby certify that the foregoing transcript is a complete, true, and accurate transcript of the testimony indicated, held on November 14, 1997, in the matter of: E. R., a child, Case No. 96-5493.

I FURTHER CERTIFY that this proceeding was reported by me, and that the foregoing transcript has been prepared by me or under my direction.

Date:



JOHN E. HALTER-Reporter

M.

sion expires May 29, 2001.

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